

No. 12278

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United States  
Court of Appeals  
For the Ninth Circuit.

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LESTER W. HURLEY,

Appellant,

vs.

SOUTHERN CALIFORNIA EDISON COM-  
PANY, LIMITED,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

OCT 28 1949

PAUL P. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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# NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

FRANK M. GUNTER

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THURMAN L. McCORMICK

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FULCHER & WYNN

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CAROL G. WYNN

823 Title Guarantee Bldg.  
Los Angeles 13, Calif. [1\*]

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\* Page numbering appearing at bottom of page of original certified Transcript of Record.

In the District Court of the United States for the  
Southern District of California, Central Division

Civil Action No. 5187-WM

LESTER W. HURLEY,

Plaintiff,

vs.

SOUTHERN CALIFORNIA EDISON COM-  
PANY, LIMITED, a corporation,

Defendant.

### COMPLAINT FOR ACCOUNTING

Now comes the above named plaintiff, and for his cause of action against the defendant alleges and states:

1. The plaintiff herein is a resident of the County of Jackson, State of Missouri.

2. That the defendant, Southern California Edison Company, Limited, is a corporation organized under and in pursuance of the laws of the State of California, with its principal office and place of business located in Los Angeles, California.

3. Plaintiff further states that the grounds upon which the jurisdiction of the court depends are:

Diversity of citizenship between the parties hereto, and the amount in controversy herein exceeds Three Thousand Dollars (\$3,000.00), and as grounds for jurisdiction in equity plaintiff avers that he seeks to secure an accounting from the defendant corporation for dividends due, owing and unpaid to plaintiff [2] herein on stock owned by



the plaintiff in defendant corporation, as well as stock rights to which he is entitled, and for which the defendant has failed and refused to account, although requested so to do.

4. Plaintiff further states that William Price, the former husband of Elizabeth J. Price, was, during his lifetime, the owner of a substantial amount of stock in the Southern California Edison Company, Limited; that on November 20th, 1928, under the direction of William Price, Certificates numbered AO-59630, AO-59635 and A-8752 to A-8756, inclusive, were issued to Elizabeth J. Price, George E. Burton and Lester Hurley, as joint tenants with full right of survivorship; that said certificates totaled five hundred seventy-five (575) shares of common stock in the Southern California Edison Company, Limited, of the par value of Twenty-five Dollars (\$25.00) per share; that at the time said stock was issued William Price resided in California and the plaintiff resided in Kansas City, Missouri.

5. Plaintiff further states that on November 20th, 1928, there were issued by the Southern California Edison Company, Limited, Certificates numbered A-10216, AO-86998 and AO-87011 of preferred stock in the Southern California Edison Company, Limited, to Elizabeth J. Price, George E. Burton and Lester Hurley, as well as eighty-eight (88) shares of common stock represented by Certificates numbered AO-59759 and AO-59770.

6. Plaintiff further states that thereupon the

said Elizabeth J. Price, George E. Burton and Lester Hurley became the owners in joint tenancy with full rights of survivorship of all of said stock represented by the above designated certificates; that said certificates so issued were delivered to Elizabeth J. Price; that Elizabeth J. Price was the grandmother of the plaintiff herein.

7. Plaintiff further states that at no time were said [3] certificates in the possession or control of Lester Hurley; that at no time prior to March 18, 1944, were said certificates presented to or examined by Lester Hurley, plaintiff herein.

8. Plaintiff further states that thereafter, and on January 5th, 1929, William Price died and was survived by his then wife, Elizabeth J. Price, and her son, George E. Burton.

9. Plaintiff further states that thereafter and promptly following the death of William Price, and for the purpose of cheating and defrauding the plaintiff out of his entire right, ownership and interest in and to the aforesaid 575 shares of common stock, and Certificates numbered A-8752 to A-8756, inclusive, and Certificates AO-59635 and AO-59630, representing said stock, the said Elizabeth J. Price and George E. Burton did, on the 19th day of February, 1929, present to defendant corporation the aforesaid seven certificates, purporting to bear on the back of said certificates an assignment and power of attorney authorizing the defendant company to transfer said certificates to Elizabeth J. Price and George E. Burton, as joint tenants with

full right of survivorship, thereby attempting to eliminate and destroy all the right, title, interest and ownership of plaintiff therein; that under date November 19, 1928, a dividend order was made up and thereafter filed with defendant company on December 11, 1928, which purported to bear the signature of Lester Hurley.

10. Plaintiff further states that at the time said dividend order and the assignments of the aforesaid stock certificates were delivered to defendant company, the plaintiff herein was a minor twenty years of age; that plaintiff did not discover the fraud that had been practiced upon him, as herein alleged, until March 18th, 1944; that promptly upon the discovery of said fraud, due notice of said fraud and deception that had been practiced upon him was given to the defendant company and suit was thereafter filed to enforce plaintiff's rights in and to [4] said stock.

11. Plaintiff further states that during the lifetime of Elizabeth J. Price, the plaintiff was never given any information as to the existence of the aforesaid shares of stock hereinabove described; that he had no knowledge or information as to the name or names in which the above described shares of stock stood; that plaintiff was led to believe by Elizabeth J. Price and George E. Burton, the son of Elizabeth J. Price, that upon the death of Elizabeth J. Price, the plaintiff might receive some benefit or interest in some stock, the exact nature and amount to depend upon her feeling toward plain-

tiff up to the time of her death; that plaintiff was led to believe and made to understand that any effort on the part of the plaintiff to inquire into her business and affairs or financial arrangements would result in unfavorable consideration of the plaintiff by Elizabeth J. Price in the disposition of the stock owned by her in defendant corporation; that plaintiff was led to believe, and did believe, that Elizabeth J. Price's imperious manner and intense resentment at the slightest inquiry by plaintiff as to her financial arrangements was merely a part of her personality.

12. Plaintiff further states that the representations so made to the plaintiff by Elizabeth J. Price and George E. Burton that whatever interest or benefit he might derive from stock in defendant company at any time owned by her or William Price would depend upon her feeling toward him at the time of her death were false, fraudulent and untrue, and known by Elizabeth J. Price and George E. Burton to be untrue when made; that said representations were made for the purpose of controlling the plaintiff and deceiving him as to his interest and ownership in the aforesaid shares of stock; that said representations were further made to prevent the plaintiff from asking any questions or making any inquiry that might bring to light or disclose plaintiff's ownership [5] and interest in and to the aforesaid stock, and the fraudulent transfer attempted on February 19th, 1929; that Elizabeth J. Price and George E. Burton well knew that

the ownership of all the above described stock was vested in the plaintiff on November 20th, 1928, in joint tenancy with Elizabeth J. Price and George E. Burton, and that his rights therein in no way depended upon the will, humor or caprice of Elizabeth J. Price; that said pretense that the ultimate interest would depend upon the will and favor of Elizabeth J. Price was maintained through the years in order that plaintiff might be made to feel that any act or inquiry by plaintiff that was displeasing to Elizabeth J. Price would result in the loss by plaintiff of any benefits which he might otherwise secure; that as a result of said deceit and misrepresentation plaintiff made no inquiry concerning said stock in defendant company until after the death of Elizabeth J. Price; that Elizabeth J. Price died on the 27th day of December, 1943.

13. Plaintiff further states that subsequent to the death of Elizabeth J. Price and in March, 1944, plaintiff learned for the first time that the above described stock was placed in his name on November 20th, 1928, and that the subsequent transfer, of the stock described in Paragraph 9 hereof, out of his name was secured through the forgery of his signature to said stock certificates; that as a result of said knowledge, suit was filed in the United States District Court for the District of Kansas, First Division, wherein George E. Burton was plaintiff, and Lester W. Hurley and Southern California Edison Company, Limited, a corporation, were defendants, Civil Action No. 4974.

14. Plaintiff further states that it was found by the court in said cause that none of said purported assignments and irrevocable powers of attorney attached to each of the certificates described in Paragraph 9 hereof bore the genuine and true signature of Lester W. Hurley, but that each of said signatures [6] of Lester W. Hurley appearing thereon was a forgery; that it was further found by the court that the dividend order dated November 19th, 1928, and filed with the Southern California Edison Company, Limited, on December 11th, 1928, does not bear the true and genuine signature of Lester W. Hurley, but that the purported signature of Lester W. Hurley appearing thereon was a forgery; that Lester W. Hurley had no knowledge that he owned or had any interest in the certificates designated in Paragraph 9 hereof, representing 575 shares of stock in the Southern California Edison Company, Limited, until March 18th, 1944.

15. Plaintiff further states that the court found that:

“In view of the circumstances as disclosed by the record, even had the defendant Hurley executed the instruments of transfer (which conclusion is not sustained by satisfactory evidence), the entire transaction was so tainted with deception practiced upon the defendant by his grandmother and his uncle, that the transfer of the 575 shares of stock cannot be approved by the court and thus become effective. Even had the defendant Hurley executed the instru-

ments of transfer while a minor, his notice of the corporation under date of March 20, 1944, shown in the record as defendant's Exhibit "L," which came to the attention of the plaintiff prior to the bringing of this action, constituted a complete disaffirmance of such transfer within a reasonable time after reaching his majority, upon the discovery that such transfer was claimed."

16. Plaintiff further states that it was further ordered, adjudged and decreed by the court that Lester W. Hurley was, upon the death of Elizabeth J. Price, the owner of an undivided one-half interest in and to the 575 shares of common stock in the Southern California Edison Company, Limited, [7] described in Paragraph 9 hereof.

17. Plaintiff further states that the findings of fact and conclusions of law filed in said cause on July 26th, 1945, is marked Exhibit "A," attached hereto, and the judgment filed in said cause on July 26th, 1945, is marked Exhibit "B," attached hereto, and each made a part hereof as fully and completely as if set out herein.

18. Plaintiff further states that from and after November 20th, 1928, as a result of his ownership in the above described stock, he became entitled, during the lifetime of Elizabeth J. Price, to one-third of all the dividends that were accumulated and paid on the 575 shares of stock described in Paragraph 4 hereof, together with his one-third interest in all stock rights that accrued to said stock; that as a result of the forgery hereinabove

described that occurred during the month of February, 1929, and the transfer of said stock on the books of the company into the names of Elizabeth J. Price and George E. Burton, the Southern California Edison Company, Limited, paid said dividends to Elizabeth J. Price without the consent, authorization or knowledge of the plaintiff herein; that in addition thereto the defendant company was, as a result of the forged dividend order dated November 19th, 1928, induced to and did pay all dividends and stock rights on stock described in Paragraph 5 hereof to Elizabeth J. Price without the knowledge, authorization or consent of the plaintiff herein; that one-third of said dividends and stock rights so illegally and unlawfully paid to Elizabeth J. Price were, in fact, due and owing to the plaintiff herein; that the one-third part of said dividends and stock rights so illegally and unlawfully paid and distributed to Elizabeth J. Price are in excess of the total sum of Ten Thousand Dollars (\$10,000.00); that plaintiff is entitled to seven per cent interest on each of said dividends, as well as the value of stock rights so issued, [8] as the same accrued from time to time until the same is paid to plaintiff herein. At all times in this paragraph mentioned, defendant knew or had reason to know of the fraud of Elizabeth J. Price and George E. Burton hereinbefore alleged.

19. Immediately after the filing, as hereinbefore alleged, of the judgment, a copy of which is attached hereto marked Exhibit "B," plaintiff de-



manded of defendant herein that it account to plaintiff for and pay and deliver to plaintiff all dividends and stock rights declared by defendant and owing to plaintiff but neither paid nor delivered to plaintiff as hereinbefore alleged. Repeatedly thereafter up to and again on February 8, 1946, defendant requested of plaintiff that he allow defendant time within which to investigate said matter and advised plaintiff that as soon as defendant had completed its study of his claim said defendant would further advise plaintiff, but said defendant has failed to either account, or pay, or deliver to plaintiff said dividends or stock rights.

Wherefore, plaintiff prays that the defendant herein be required, ordered and directed to account to the plaintiff herein for all dividends and stock rights paid and distributed to Elizabeth J. Price on all the stock hereinabove described; that the amount due plaintiff on dividends and stock rights so declared and distributed be found and determined by the court; that judgment be entered in favor of the plaintiff therefor, together with interest thereon at the rate of seven per cent per annum from the date of the respective payments so made by said company to date, together with such further and other relief as to the court shall seem just and proper, as well as for his costs and charges herein expended.

FRANK M. GUNTER &

THURMAN L. McCORMICK,

By /s/ FRANK M. GUNTER,

Attorneys for Plaintiff.

## EXHIBIT "A"

In the District Court of the United States  
for the District of Kansas

Civil Action No. 4974

GEORGE E. BURTON,

Plaintiff,

vs.

LESTER W. HURLEY,

Defendant.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Now on this day this cause having been heretofore taken under advisement and the Court now being fully advised, makes specific findings of fact and conclusions of law, as follows:

Findings of Fact

1. That upon the death of William Price on January 5, 1929, five hundred seventy-five (575) shares of stock in the Southern California Edison Company Ltd. represented by certificates dated November 20, 1928, and bearing Numbers AO59630, AO59635 and A8752 to A8756 inclusive, were owned by Elizabeth J. Price, George E. Burton and Lester Hurley as joint tenants with full rights of survivorship.

2. That Elizabeth J. Price died on the 27th day of December, 1943.

3. That upon February 19, 1929, there was is-

sued by the Southern California Edison Company Ltd. certificates bearing numbers AO61852 and A9230 to A9234 inclusive, for five hundred seventy-five (575) shares of common stock in the Southern California Edison Company Ltd. to Elizabeth J. Price and George E. Burton with full rights of survivorship, without the surrender of certificates dated November 20, 1928, bearing numbers AO-59630, AO59635 and A8752 to A8756 inclusive, properly endorsed.

4. That January 19, 1929, was Saturday and the Brotherhood State Bank of Kansas City, Kansas, closed at 12 o'clock [10] noon on said day.

5. That none of said purported "Assignments and Irrevocable Powers of Attorney" attached to each of the certificates designated in paragraph 1 hereof bear the true and genuine signature of Lester W. Hurley, but that each of said signatures of Lester W. Hurley appearing thereon is a forgery.

6. That no consideration of any character was ever paid by Elizabeth J. Price or George E. Burton to Lester W. Hurley, nor was any consideration of any character ever received by Lester W. Hurley from any other source for the transfer of the interest of Lester W. Hurley in the five hundred seventy-five (575) shares of stock described in paragraph 1 hereof.

7. That Lester W. Hurley had no knowledge that he owned or had any interest in the certificates designated in paragraph 1 hereof representing five hundred seventy-five (575) shares of stock in the

Southern California Edison Company Ltd. until March 18, 1944.

8. That at the time of the aforesaid attempted transfer of the above designated stock certificates Lester W. Hurley was a minor under the age of twenty-one (21) years.

9. That upon March 20, 1944, Lester W. Hurley disaffirmed the purported transfer of the above designated stock certificates, which disaffirmance was made within a reasonable time after reaching his majority.

10. That the dividend order dated November 19, 1928, and filed with the Southern California Edison Company, Limited, on December 11, 1928, does not bear the true and genuine signature of Lester Hurley, but that the purported signature of Lester Hurley appearing thereon is a forgery.

11. That the statements and conduct of Elizabeth J. Price and George E. Burton were calculated to and did conceal from the defendant herein the fact that he was the owner of an [11] interest in the above designated five hundred seventy-five (575) shares of stock represented by the aforesaid certificates as well as the fact that an attempt had been made on January 19, 1929, to transfer said stock to Elizabeth J. Price and George E. Burton as Joint tenants with full rights of survivorship.

12. That Lester W. Hurley had no knowledge that the dividend order dated November 19, 1928, existed until March 18, 1944.

Conclusions of Law

1. That defendant, Lester W. Hurley, is in no manner bound by the "Assignment and Irrevocable Power of Attorney" attached to each of the certificates of stock issued by the Southern California Edison Company, Limited, on November 20, 1928, being certificates numbered AO59630, AO59635 and A8752 to A8756, inclusive, as said assignments and each of them are void and of no force and effect.

2. That the defendant, Lester W. Hurley, is the owner of an undivided one-half ( $\frac{1}{2}$ ) interest in the aforesaid five hundred seventy-five (575) shares of common stock of the Southern California Edison Company, Limited, or to two hundred eighty-seven and one half shares of said stock.

3. That the issue of stock certificates dated February 19, 1929, bearing numbers AO61852 and A9230 to A9234 inclusive, were fraudulently procured and are therefore void.

4. That Lester W. Hurley is in no manner bound by the dividend order dated November 19, 1928, and that said dividend order, insofar as it purports to be an order on the part of Lester W. Hurley to pay said dividends to Elizabeth J. Price, is void and of no force or effect.

EDGAR S. VAUGHT,  
U. S. District Judge.

Approved:

THURMAN L. McCORMICK

910 Rialto Building

Kansas City, Missouri

RICE, MILLER & HYATT

Huron Building

Kansas City, Kansas

By THOMAS C. LYSAUGHT

Attorneys for Defendant

Service of copy of the within Findings of Fact and Conclusions of Law prepared by attorneys for defendant acknowledged this 21st day of June, 1945.

STANLEY, STANLEY,

SCHROEDER, WEEKS &

THOMAS,

By ARTHUR J. STANLEY, JR.,

Attorneys for Plaintiff.

Filed July 26, 1945.

/s/ HARRY M. WASHINGTON,

Clerk.

EXHIBIT "B"

In the District Court of the United States  
for the District of Kansas

Civil Action No. 4974

GEORGE E. BURTON,

Plaintiff,

vs.

LESTER W. HURLEY,

Defendant.

JUDGMENT

Now on this day, this cause having heretofore been fully heard by the Court (a jury having been duly waived) and thereafter taken under advisement and the Court now being fully advised finds the issues herein and each of them in favor of the defendant, Lester W. Hurley and against the plaintiff, George E. Burton.

It Is Therefore Ordered, Adjudged and Decreed by the Court that defendant, Lester W. Hurley, is the owner of an undivided one-half ( $\frac{1}{2}$ ) interest in and to five hundred seventy-five (575) shares of common stock in the Southern California Edison Company, Limited.

It Is Further Ordered, Adjudged and Decreed by the Court that certificates dated February 19, 1929, and bearing numbers AO61852 and A9230 to A9234 inclusive, for five hundred seventy-five (575) shares of common stock of the Southern California

Edison Company, Limited, be and the same are hereby cancelled and for naught held; that said plaintiff, George E. Burton, be and he is hereby ordered and directed to surrender and deliver the last above designated certificates to the Southern California Edison Company, Limited, within 20 days from the date of the filing of this decree, with instructions from George E. Burton to the Southern California Edison Company, Limited, to issue in the place and stead thereof new certificates [14] for two hundred eighty-seven and one-half (287½) shares of common stock in the Southern California Edison Company, Limited, to Lester W. Hurley.

It Is Further Ordered, Adjudged and Decreed by the Court that title to the remaining and unappropriated two hundred eighty-seven and one-half (287½) shares of common stock in the Southern California Edison Company, Limited, including therein the pledged stock, if any, shall vest in George E. Burton.

It Is Further Ordered, Adjudged and Decreed by the Court that the defendant, Lester W. Hurley, have and recover his costs and charges herein expended and have execution for the enforcement of the terms and provisions of this judgment.

Dated this 24th day of July, 1945.

Enter

EDGAR S. VAUGHT,

Judge Assigned.

Foregoing Journal entry approved as to form.



Parties hereto stipulate that this journal entry of judgment may be signed by the Court during his absence from the jurisdiction of the Judicial District in which this was tried.

STANLEY, STANLEY,  
SCHROEDER, WEEKS  
& THOMAS,  
By LEE E. WEEKS,  
Attorneys for Plaintiff.

THURMAN L. McCORMICK,  
RICE, MILLER & HYATT,  
By THOMAS C. LYSAUGHT,  
Attorneys for Defendant.

Filed July 26, 1945.

HARRY M. WASHINGTON,  
Clerk.

[Endorsed]: Filed Mar. 6, 1946.

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[Title of District Court and Cause.]

ANSWER OF DEFENDANT

Comes Now the defendant above named and answers plaintiff's complaint herein as follows:

First Defense

1. Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1. and 3. of the complaint.

2. Admits the allegations contained in Paragraph 2. of complaint.

3. Answering Paragraph 4. of the complaint, defendant admits the allegations thereof, except that this defendant alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, that at the time said stock was issued William Price resided in California and the plaintiff resided in Kansas City, Missouri.

4. Admits the allegations in Paragraph 5, and alleges that the number of shares represented by each certificate for [16] preferred stock therein described was as follows:

Certificate A-10216 .....	100 shares
Certificate AO-86998 .....	11 shares
Certificate 87011 .....	80 shares

5. Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 6., 7., and 8. of the complaint.

6. Answering Paragraph 9., defendant admits that the certificates and dividend order therein described were presented to defendant; defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said Paragraph.

7. Answering Paragraph 10., defendant admits that plaintiff on or shortly after March 18, 1944, notified defendant as therein alleged; defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said Paragraph.

8. Defendant alleges that it is without knowledge or information sufficient to form a belief as to

the truth of the allegations contained in Paragraphs 11. and 12. of the complaint.

9. Answering Paragraph 13., defendant admits that the action therein described was filed, but alleges that said action was thereafter dismissed as to this defendant; defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said Paragraph.

10. Admits the allegations contained in Paragraph 14., except that defendant alleges that it is without knowledge or information sufficient to form a belief as to the allegation that plaintiff had no knowledge of his ownership or interest in said certificates until March 18, 1944.

11. Admits the allegations contained in Paragraphs 15., [17] 16. and 17. of the complaint.

12. Answering Paragraph 18., defendant admits that as a result of the transfer on its books of the said stock described in Paragraph 4. of the complaint, and as a result of the dividend order dated November 19, 1928, relative to the dividends and stock rights on the stock described in Paragraph 5. of the complaint, it paid and delivered the said dividends and stock rights to Elizabeth J. Price, and admits a one-third ( $\frac{1}{3}$ ) part of a value thereof amounts to the sum of approximately Ten Thousand Dollars (\$10,000.00); defendant denies that said dividends and stock rights, or either of them, were illegally and unlawfully, or illegally or unlawfully, paid and distributed to Elizabeth J. Price, and denies that plaintiff is entitled to interest at

seven percent (7%) or at any other rate; defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said Paragraph.

13. Admits the allegations contained in Paragraph 19., except that defendant denies that said dividends and stock rights, or either of them, were or are owing to plaintiff.

#### Second Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

#### Third Defense

That the alleged cause of action set forth in plaintiff's complaint is barred by the provisions of Section 339, Subdivision 1. of the Code of Civil Procedure of the State of California.

#### Fourth Defense

That the alleged cause of action set forth in plaintiff's complaint is barred by the provisions of Section 337, Subdivision 1. of the Code of Civil Procedure of the State of California. [18]

Wherefore, defendant prays that plaintiff take nothing by his complaint herein, and that defendant have judgment for its costs.

FULCHER & WYNN,  
CHARLES E. R. FULCHER,  
By /s/ CAROL G. WYNN,  
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed May 14, 1946.

[Title of District Court and Cause.]

PRE-TRIAL STIPULATION

I.

Statement as to the Facts.

1. The following facts are stipulated to:

On Novemebtr 20, 1928, there was issued by the defendant corporation stock certificates #A8752 to #A8756, inclusive, and #AO59635 and #AO59630, for the aggregate number of 575 shares of the common stock of said corporation, so that said stock then stood of record on the books of the defendant company in the names of Elizabeth J. Price, George E. Burton and plaintiff Lester W. Hurley, as joint tenants.

On November 26, 1928, there was issued by the defendant corporation stock certificates AO59759 and AO59779 for the aggregate number of 88 shares of common stock and AO10216 and AO86998 and AO87011 in the aggregate amount of 191 shares of 6% preferred stock [21] of said corporation, so that said stock then stood of record on the books of the company in the name of Elizabeth J. Price, George E. Burton and plaintiff Lester W. Hurley, as joint tenants.

Under date of November 19, 1928, there was forwarded to the corporation a dividend order on the defendant's usual form purporting to bear the signatures of said Elizabeth J. Price, George E. Burton and Lester W. Hurley, covering said 575 shares of common stock, and directing that all dividends

be remitted to Mrs. Elizabeth J. Price. Said order bore #12742. Defendant received said order December 11, 1928.

Under date of November 22, 1928, there was forwarded to the corporation a dividend order on the defendant's usual form purporting to bear the signatures of said Elizabeth J. Price, George E. Burton and Lester W. Hurley, covering said 88 shares of common stock and 191 shares of preferred stock hereinbefore referred to, and directing that all dividends be remitted to Mrs. Elizabeth J. Price. Said order bore #12743. Defendant received said order December 11, 1928.

On January 22, 1929, there was received by the defendant corporation at Los Angeles, having been forwarded to it by the Brotherhood State Bank of Kansas City, Kansas, each of the certificates in the aggregate number of 575 shares of common stock hereinbefore referred to, which certificates purported to be assigned to "Mrs. Elizabeth J. Price, or George E. Burton," by form of assignment purporting to bear the signatures of Elizabeth J. Price, George E. Burton and Lester W. Hurley.

The assignments were then returned by defendant to the Brotherhood State Bank with the written request that the signatures of the purported transferors be guaranteed. [22]

The certificates were then re-sent to the defendant by the Brotherhood State Bank and were received by the defendant at Los Angeles on February 1, 1929, with the signatures of Elizabeth J. Price

and George E. Burton guaranteed thereon by said bank.

On February 7, 1929, the defendant corporation returned said certificates to said Brotherhood State Bank together with the defendant's letter, dated February 7, 1929, requesting that the transferee designation be changed to joint tenancy form and the signature of Lester W. Hurley be guaranteed.

In response to this letter said Brotherhood State Bank altered the transferee designation and added a guarantee of the genuineness of the purported signature of Lester W. Hurley, and thereupon the defendant corporation transferred said 575 shares of common stock to said Elizabeth J. Price and George E. Burton, as joint tenants.

Thereafter to and including the entry of the judgment hereinafter mentioned none of said 575 shares of common stock appeared upon the records of the defendant corporation to stand in the name of said Lester W. Hurley.

2. Plaintiff contends, and defendant says it has no information, that each of the purported signatures of Lester W. Hurley, including the one spelled "Hurleey" was a forgery, and the assignments and dividend orders were invalid.

3. It is stipulated by the parties that subsequently, to wit: about March 18, 1929, defendant received at Los Angeles from Mrs. Elizabeth J. Price and George E. Burton a dividend order on the defendant's usual form, numbered 13157, and signed by said Mrs. Elizabeth J. Price and George E. Bur-

ton, directing that dividends on common stock standing in their name be paid to Mrs. Elizabeth J. Price.

4. It is stipulated that pursuant to said transfer following said assignments purporting to bear the signatures of Mrs. Elizabeth J. Price, George E. Burton and Lester W. Hurley, and said dividend orders, there was paid and delivered to said Elizabeth J. Price the dividends and stock rights hereinafter mentioned, which had been, on or about, or immediately prior to the respective dates of payment, declared and set aside by the defendant as payable to its shareholders.

(a) It is agreed that the dividends and stock rights so paid by the defendant herein to Elizabeth J. Price on the said 575 shares of stock under dividend order #13157 are in the total sum of \$15,-108.12; that said common stock rights issued on said 575 shares of stock and delivered to Elizabeth J. Price are in the total amount of 1725 rights; that the total sum of said dividends and stock rights is made up of the following respective amounts paid and delivered on the following respective dates:

Dividends paid to Mrs. Elizabeth J. Price—  
Dividend Order #13157 dated March 18, 1929

Dividends Paid 2/19/29 to 12/27/43

1929	(3 quarters)	\$ 862.50
1930		1,150.00
1931		1,150.00
1932		1,150.00
1933		1,150.00



1934	1,006.25
1935	862.50
1936	862.50
1937	934.37
1938	1,006.25
1939	1,006.25
1940	1,092.50
1941	1,006.25
1942	1,006.25
1943 to 12/27	862.50

## Common Stock Rights Issued

1929 — 575 Rights.

1930 — 575 Rights.

1931 — 575 Rights.

## Price Range of Rights.

Year	High	Low
1929	3.55	2.80
1930	4.50	2.80
1931	2.81 $\frac{1}{4}$	1.75

[24]

(b) It is further agreed that in addition to the dividends paid and stock rights delivered in pursuance of dividend order No. 13157, the following dividends were paid and the following stock rights delivered to Elizabeth J. Price, in the respective amounts and on the respective dates hereinafter set forth; that said dividend payments were made and said stock rights delivered upon the authority of, and in pursuance of dividend order No. 12743, dated November 22, 1928:

Dividends paid to Mrs. Elizabeth Jane Price—

Dividend Order #12743 dated 11/22/28

Dividends paid on above stock to 12/27/43

Common Stock

Year	Amount	Year	Amount
1929	\$176.00	1937	\$143.00
1930	176.00	1938	154.00
1931	176.00	1939	154.00
1932	176.00	1940	167.20
1933	176.00	1941	154.00
1934	154.00	1942	154.00
1935	132.00	1943	132.00
1936	132.00		<hr/> \$2,356.20

Rights Issued on Common Stock

1929 — 88 Rights

1930 — 88 Rights

1931 — 88 Rights

Dividends paid to Mrs. Elizabeth Jane Price—

Dividend Order #12743 dated 11/22/28

Preferred Series "B" 6% Stock

Year	Amount	Year	Amount
1929	\$286.50	1937	\$286.50
1930	286.50	1938	286.50
1931	286.50	1939	286.50
1932	286.50	1940	286.50
1933	286.50	1941	286.50
1934	286.50	1942	286.50
1935	286.50	1943	286.50
1936	286.50		<hr/> \$4,297.50

## Price Range of Rights

Year	High	Low
1929	3.55	2.80
1930	4.50	2.80
1931	2.81 $\frac{1}{4}$	1.75

[25]

(c) It is further stipulated and agreed that for the purpose of this action, the stock rights for the year 1929 involved herein were of the value of \$3.07 $\frac{1}{2}$  per right; that the stock rights issued for the year 1930 were of the value of \$3.70 per right; that the stock rights issued for the year 1931 were of the value of \$2.53 per right.

5. Plaintiff claims, and defendant states it has no information that William Price died January 5, 1929; that Elizabeth Price died December 27, 1943; that at the time of the claimed transfers to Elizabeth J. Price and the dividend orders claimed by plaintiff to be forgeries, plaintiff was a minor of the age of twenty years; that he learned of the ownership of said stock on March 18, 1944; thereupon on March 20, 1944, he repudiated said transfers and said dividend orders.

6. It is admitted that promptly thereafter said Burton filed suit in the District Court of the United States for the District of Kansas, naming the plaintiff herein and the defendant herein each as defendants in said action; that on June 5, 1944, said Court ordered that each said persons so named as defendants appear in said action; that thereupon defendant herein appeared specially and moved to vacate said order and to quash service upon it, which said

motion was opposed by the plaintiff herein, and said motion was on the 29th day of September, 1944, heard by said Court, and thereafter said Court did, over the opposition of the plaintiff herein, grant said motion. Thereafter said action was tried on issues joined therein by the plaintiff therein and the plaintiff in this action, and said Court rendered its judgment and filed its findings, copies of which are attached to the complaint herein; immediately thereafter on October 15, 1945, plaintiff herein made written demand on the defendant to pay one-third of all of the cash and stock rights dividends so declared on said stock, together with legal interest; whereupon [26] defendant asked for time to investigate, but no payment has been made to plaintiff.

## II.

### Statement as to Documents

The following is a list of all documents exhibited by the parties to each other, the genuineness of each of which is admitted, excepting only as to the purported signature of the plaintiff herein appearing on any of the same, and excepting as to their validity:

1. Certificates #A8752 to and including #A8756, and #AO59635 and #AO59630, aggregating 575 shares of the common stock of defendant corporation, issued in the name of Mrs. Elizabeth J. Price, George E. Burton and Lester W. Hurley, and purported assignments of same.

2. Dividend orders #12742, #12743 and #13157.

3. Letter of defendant addressed to the Brotherhood State Bank at Kansas City, Kansas, dated February 7, 1929.

4. Letter of the Brotherhood State Bank addressed to the Southern California Edison Company, dated February 15, 1929.

III.

Statement as to Probable Duration of Trial  
Counsel believe the trial can be concluded in less than three days.

Dated: June 11, 1946.

FRANK M. GUNTER &  
THURMAN L. McCORMICK,

By /s/ FRANK M. GUNTER,  
Attorneys for Plaintiff.

FULCHER & WYNN,

By /s/ CAROL G. WYNN,  
Attorneys for Defendant.

[Endorsed]: Filed June 12, 1946.

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[Title of District Court and Cause.]

SUPPLEMENTAL ANSWER OF DEFENDANT

Comes Now The Defendant above named, and with leave of Court first had and obtained, makes this supplemental answer to plaintiff's complaint to conform to the evidence introduced at the trial of this cause:

(1) That subsequent to the date of the commencement of the above entitled action, and on June 5, 1946, defendant made written demand upon plaintiff that said plaintiff proceed against Elizabeth J. Price and against George E. Burton, and that plaintiff pursue his remedy against them, and each of them, and that defendant did inform plaintiff that in the event he neglected to do so, defendant would deem itself exonerated to the extent to which it was thereby prejudiced.

(2) That despite said demand, said plaintiff refused and neglected to proceed as requested, and that defendant has thereby been prejudiced in the full amount of the plaintiff's claim herein.

FULCHER & WYNN,

By /s/ CAROL G. WYNN,

Attorneys for Defendant.

Affidavit of service by mail attached. [28]

State of California

County of Los Angeles—ss.

O. V. Showers being by me first duly sworn, deposes and says: that he is the Secretary of the Southern California Edison Co., Ltd., defendant in the above entitled action; that he has read the foregoing Supplemental Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ Illegible

Subscribed and sworn to before me this 22nd day of November, 1946.

[Seal] /s/ JUANITA SNIDER,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires August 12, 1949. [29]

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[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES OF DEFENDANT IN SUPPORT OF PRETRIAL ORDER.

“II.

The payment by defendant of the dividends accruing to one of the several joint owners of the stock discharged defendant's liability to all of said owners.

California Civil Code, Sec. 1475.

Cober vs. Connolly, 20 Cal 2nd, 741, at 744.

Delano vs. Jacoby, 96 Cal. 275, at 278.”

Dated this 23 day of Sept., 1949.

In the District Court of the United States, Southern  
District of California, Central Division

No. 5187-WM Civil

LESTER W. HURLEY,

Plaintiff,

vs.

SOUTHERN CALIFORNIA EDISON COM-  
PANY, LIMITED, a corporation,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW AFTER NEW TRIAL

A new trial of the above-entitled cause having heretofore been ordered and said cause having come on regularly for trial in the above-named court on November 3, 1948 and plaintiff having then appeared by Messrs. Thurman L. McCormick and Frank M. Gunter, his attorneys and the defendant having then appeared by Messrs. Charles E. R. Fulcher and Carol G. Wynn, E. W. Cunningham of counsel, its attorneys, and the cause having proceeded to a trial of the issue designated by the court in its order granting new trial, to-wit: whether or not defendant knew or had reason to know of the fraud perpetrated upon plaintiff by plaintiff's co-tenant, Elizabeth J. Price; and evidence oral and documentary having been received and the cause having been argued and submitted for



decision, the [30] court now makes findings of fact and conclusions of law as follows:

### Findings of Fact

#### I.

At the time of the commencement of this action and at all times herein mentioned plaintiff was a citizen and resident of the State of Missouri.

At the time of the commencement of this action and at all times herein mentioned defendant was a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business located in Los Angeles, California.

The amount in controversy between plaintiff and defendant in this action, exclusive of interest and costs, exceeds \$3,000.

Jurisdiction of this court is invoked by reason of the amount in controversy and the diversity of citizenship existing between plaintiff and defendant.

#### II.

Some years prior to November 19, 1928, William Price and Elizabeth J. Price were married. At the time of this marriage Elizabeth J. Price had two adult children born of a previous marriage: a son named George E. Burton and a daughter, who was plaintiff's mother. Prior to November 19, 1928, plaintiff's mother had died, leaving plaintiff as the sole surviving issue of her body.

For many years prior to November 19, 1928, plaintiff had resided, and at all times hereinafter

mentioned continued to reside, in the State of Missouri; and William Price had resided, and at all times hereinafter mentioned until his death continued to reside, in the State of California with plaintiff's grandmother, Elizabeth J. Price.

For sometime prior to November 19, 1928, William Price had been the owner of a substantial number of the authorized [31] issued and outstanding shares of the Series "B" six per cent preferred and the common capital stock of Southern California Edison Company, Limited, a corporation, the defendant herein.

### III.

On November 20, 1928, at Los Angeles, California, William Price caused the defendant to issue in the names of Elizabeth J. Price, George E. Burton and Lester Hurley, the plaintiff, as joint tenants with full rights of survivorship, certificates numbered AO-59630, AO-69633 and A-8752 to A-8756 inclusive, evidencing ownership of 575 shares of the common capital stock of the defendant corporation, of the par value of \$25.00 per share; and William Price then and there caused the certificates so issued to be delivered to plaintiff's grandmother, Elizabeth J. Price.

### IV.

On November 20, 1928, at Los Angeles, California, William Price likewise caused the defendant to issue in the names of Elizabeth J. Price, George E. Burton and Lester Hurley, the plaintiff, as joint tenants with full rights of survivorship, certificates

numbered AO-86998, AO-87011 and A-10216 evidencing ownership of 191 shares of Series "B" six per cent preferred stock of the defendant corporation, together with certificates numbered AO-59759 and AO-59770 evidencing ownership of 88 shares of the common capital stock of the defendant corporation; and William Price then and there likewise caused the certificates so issued to be delivered to Elizabeth J. Price.

#### V.

Sometime prior to November 19, 1928, Elizabeth J. Price had requested plaintiff to sign two dividend orders in blank on [32] the usual form provided by defendant for such purpose, and plaintiff did gratuitously sign and deliver said dividend order blanks to Elizabeth J. Price in the State of Missouri, but plaintiff then had no knowledge or understanding of the purpose for which Elizabeth J. Price requested his signature or of the use which Elizabeth J. Price intended to make of the documents which the plaintiff then signed.

#### VI.

On December 11, 1928, Elizabeth J. Price delivered to defendant at Los Angeles, California, one of the dividend order forms mentioned above in Paragraph V, bearing the signatures of Elizabeth J. Price, George E. Burton and plaintiff, directing that all dividends on the 575 shares of common stock described above in Paragraph III be remitted to Elizabeth J. Price.

Said dividend order was numbered 12742, and was and is in the words and figures following:

“Form-Inv. 21-A Rev. 12742

Kindly Sign and Return at Once  
Southern California Edison Company  
Dividend Order

Date Nov. 19th 1928

Southern California Edison Company  
Los Angeles, California.

Gentlemen:

Until this order is revoked in writing, please remit to Mrs. Elizabeth J. Price at the address given below, by check drawn to his order, the dividend now due, or which may become due on all shares of stock of your company, now or hereafter standing in the name of Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley on the books of your company.

Stock how held.....

Original Preferred..... Preferred Series A.....

Common (575 shares) Preferred Series B.....

Signature Mrs. Elizabeth J. Price

Address.....

Signature George E. Burton

Address 1046 Ann Ave. Kansas City,

Kansas

Signature Lester Hurley

Address.....

Witness:

Signature Helen Burton

Address 1046 Ann Ave. K. C. Kans.

Address for sending dividends: 1301 West 52nd St.  
Los Angeles.

Note: Dividend Order must be signed by record owner of stock exactly as the name or names appear on the certificate. If signed by agent, evidence of authority must accompany Dividend Order.

Dec 11 1928''

VII.

On December 11, 1928, Elizabeth J. Price delivered to defendant at Los Angeles, California, the second of the dividend order forms mentioned above in Paragraph V, bearing the signatures of Elizabeth J. Price, George E. Burton and plaintiff, directing that all dividends on the 191 shares of Series "B" six per cent preferred and the 88 shares of common stock described above in Paragraph IV be remitted to Elizabeth J. Price.

Said dividend order was numbered 12743, and was and is in the words and figures following: [34]

“Form-Inv. 21-A Rev. 12743

Kindly Sign and Return at Once  
Southern California Edison Company  
Dividend Order

Date Nov 22nd 1928

Southern California Edison Company,  
Los Angeles, California

Gentlemen:

Until this order is revoked in writing, please re-

mit to Mrs. Elizabeth J. Price at the address given below, by check drawn to his order, the dividend now due, or which may become due on all shares of stock of your company, now or hereafter standing in the name of Mrs. Elizabeth J. Price and George E. Burton and Lester Hurley on the books of your company.

Stock how held.....

Original Preferred..... Preferred Series A.....

Common 88 shares Preferred Series B 191 shares

Signature Mrs. Elizabeth J. Price

Address 1301 West 52nd St. Los Angeles

Signature George E. Burton

Address 1046 Ann Ave. Kansas City,  
Kansas

Signature Lester Hurley

Address 5716 Scarritt K C Mo.

Witness:

Signature R. N. Jones

Address 3829 Garfield Ave.

KC Mo.

Address for sending dividends: 1301 West 52nd  
Street Los Angeles

Note: Dividend Order must be signed by record owner of stock exactly as the name or names appear on the certificate. If signed by agent, evidence of authority must accompany Dividend Order.

Dec 11 1928" [35]

### VIII.

William Price died at Los Angeles, California, on January 5, 1929, and Elizabeth J. Price accom-

panied his remains to the State of Missouri for burial.

### IX.

On or about January 19, 1929, at Kansas City, in the State of Kansas, Elizabeth J. Price caused the Brotherhood State Bank of that city to forward to defendant at Los Angeles, California, the certificates for 575 shares of common stock listed above in Paragraph III, together with forms of assignment attached purporting to bear the signatures of Elizabeth J. Price, George E. Burton and plaintiff, and purporting to assign the 575 shares of common stock to "Mrs. Elizabeth J. Price, or George E. Burton."

The certificates with the forms of assignment attached were received by defendant on January 22, 1929, and the assignments were thereupon returned to the Brotherhood State Bank with the request by defendant that the signatures of the purported transferers be guaranteed.

On February 1, 1929, defendant again received the forms of assignment with the signatures of Elizabeth J. Price and George E. Burton thereon guaranteed by Brotherhood State Bank. On February 7, 1929, defendant again returned the forms of assignment with a letter suggesting that the transferee designation be changed to joint tenancy form and again requesting that the purported signature of plaintiff be guaranteed. In response to this letter the Brotherhood State Bank altered the forms of assignment by changing the transferee

designation from "Mrs. Elizabeth J. Price, or George E. Burton" to Elizabeth J. Price and George E. Burton, as joint tenants, with full rights of survivorship;" and the bank thereupon added to each form [36] of assignment a guarantee of the genuineness of the purported signature of plaintiff.

This alteration of the transferee designation was made by the Brotherhood State Bank without any authority from plaintiff and without the knowledge or consent of plaintiff.

Thereafter and on or about February 19, 1929, defendant received the forms of assignment from the Brotherhood State Bank with the transferee designation altered and with the signatures of the purported transferors guaranteed as aforesaid, and defendant thereupon transferred the 575 shares of common stock to Elizabeth J. Price and George E. Burton as joint tenants.

Thereupon and at all times thereafter from on or about February 19, 1929, until following entry of the judgment of the United States District Court for the District of Kansas on July 26, 1945, hereinafter mentioned, none of the 575 shares of common stock appeared upon the records of defendant in the name of plaintiff.

## X.

Thereafter and on or about March 18, 1929, Elizabeth J. Price and George E. Burton delivered to defendant a dividend order, numbered 13157, on defendant's usual form, signed by Elizabeth J. Price and George E. Burton and directing that all



dividends on common stock standing in the names of Elizabeth J. Price and George E. Burton as joint tenants be paid to Elizabeth J. Price until such order be revoked.

## XI.

Thereafter from time to time defendant declared and set aside as payable to its shareholders certain dividend and stock rights.

The dividends so declared and set aside to the holder [37] or holders of the 575 shares of common stock described above in Paragraph III during the period from February 15, 1929 until December 27, 1943 were declared and set aside on the dates and in the amounts hereinafter set forth:

Item	Year	Amount of Dividend
1	1929 (last three quarters)	862.50
2	1930	1,150.00
3	1931	1,150.00
4	1932	1,150.00
5	1933	1,150.00
6	1934	1,006.25
7	1935	862.50
8	1936	862.50
9	1937	934.37
10	1938	1,006.25
11	1939	1,006.25
12	1940	1,092.50
13	1941	1,006.25
14	1942	1,006.25

15	1943 (to Dec. 27)	862.50
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16	The aggregate value of all dividends so declared and set aside was and is	\$15,108.12
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The stock rights so declared and set aside to the holder or holders of the 575 shares of common stock described above in Paragraph III during the period from February 15, 1929 until December 27, 1943 were as follows:

17	In 1929 a total of 575 common stock rights then having a value of \$3.075 per right, or a total value of.....\$ 1,768.13 were so declared and set aside [38]	
----	--	--

18	In 1930 a total of 575 common stock rights then having a value of \$3.70 per right, or a total value of.....\$ 2,127.50 were so declared and set aside	
----	--	--

19	In 1931 a total of 575 common stock rights then having a value of \$2.53 per right, or a total value of ..... 1,454.75 were so declared and set aside	
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20	The aggregate value of all stock rights so declared and set aside was and is .....	\$ 5,350.38
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21	The aggregate value of all dividends and all stock rights so declared and set aside was and is.....	\$20,458.50
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## XII.

The dividends and stock rights listed above in Paragraph XI in the total sum of \$20,458.50 were paid and delivered by defendant to Elizabeth J. Price under dividend order No. 13157 during the period from February 19, 1929 until the death of Elizabeth J. Price on December 27, 1943.

## XIII.

All the dividends and stock rights listed above in Paragraph XI were declared and set aside, and were paid and delivered by defendant to Elizabeth J. Price, without any notice to plaintiff and without any knowledge or authorization or consent on the part of plaintiff.

At all times mentioned above in Paragraph XI, plaintiff was the owner of an undivided one-third interest in the 575 shares of common stock described above in Paragraph III, and was entitled to receive one-third of all dividends and stock rights paid and delivered by defendant to Elizabeth J. Price, as stated above in Paragraph XII. [39]

## XIV.

At the time of the issuance of the certificates for 575 shares of common stock described above in Paragraph III, on November 20, 1928, plaintiff was a minor of the age of twenty years, and had no notice or knowledge of the issuance of any of the certificates. The certificates were never in the possession or under the control of plaintiff, and plaintiff did not know of his ownership of any interest

in any stock of the Southern California Edison Company, Limited, and did not know of the nature or purpose or effect or of the use made of the dividend order blanks signed by plaintiff at the request of Elizabeth J. Price, as stated above in Paragraph V, and did not know of the existence of any purported assignment of his interest in the 575 shares of common stock to Elizabeth J. Price and George E. Burton, and did not know of the declaration or payment of any dividends or of the issuance of any stock rights on the 575 shares of common stock, and had no knowledge of any of the facts set forth above in Paragraphs III, VI, IX, X, XI and XII, until March 18, 1944.

For many years prior to 1928 plaintiff had great trust and confidence in Elizabeth J. Price and George E. Burton, and such feeling of trust and confidence on the part of plaintiff continued until the death of his grandmother on December 27, 1943. Throughout this period both Elizabeth J. Price and George E. Burton were well aware of and freely accepted the great trust and confidence reposed in each of them by plaintiff, and a fiduciary relationship in fact existed in all the dealings throughout this period between Elizabeth J. Price and plaintiff and George E. Burton and plaintiff.

From time to time throughout the years from 1928 until the death of Elizabeth J. Price on December 27, 1943, Elizabeth J. Price and George E. Burton concealed from plaintiff [40] all the facts set forth above in Paragraphs III and IV, and

concealed from plaintiff all the facts with respect to his ownership of any interest in any stock of the defendant corporation, and during this period Elizabeth J. Price from time to time represented to plaintiff that he might receive from her estate upon her death certain stock; that whatever he might so receive would depend upon the will and favor of his grandmother; that she resented any inquiry or prying by plaintiff into her financial affairs or business arrangements.

Plaintiff believed these representations and in reliance upon them signed the blank dividend orders at the request of Elizabeth J. Price, as set forth above in Paragraph V, without inquiry as to the reason for his signature and without any knowledge or understanding as to the purpose or effect of his signature.

As a further result of plaintiff's reliance upon these representations, and of the concealment by Elizabeth J. Price and George E. Burton of plaintiff's interest in any stock of the defendant corporation, plaintiff made no inquiry concerning the stock of defendant or any other financial affairs or arrangements of either William Price or Elizabeth J. Price until after the death of his grandmother on December 27, 1943.

#### XV.

On March 20, 1944, promptly following his first discovery and knowledge on March 18, 1944, of any of the facts set forth above in Paragraphs III, VI, IX, X, XI or XII, plaintiff disaffirmed all the

aforementioned transfers and dividend orders purporting to have been executed by him.

Thereafter and on June 2, 1944, George E. Burton commenced an action in the United States District Court for the District of Kansas, entitled "George E. Burton, plaintiff v. Lester W. Hurley and [41] Southern California Edison Company, Limited, a corporation, defendants," and numbered 4974 on the records of that court. A copy of the complaint in said action is hereto attached, marked Exhibit "A" and incorporated by reference herein.

Thereafter the defendant herein appeared in said Kansas action and moved to quash the service of process upon it as a party defendant therein, upon the ground that Southern California Edison Company, Limited, a corporation, was not present in the District of Kansas and had not been served with process in the District of Kansas. Upon the hearing of this motion the United States District Court for the District of Kansas entered an order quashing the purported service of process upon the Southern California Edison Company, Limited, a corporation, as a party defendant in that action.

Thereafter and on or about July 11, 1944, plaintiff herein appeared as party defendant in said Kansas action and filed therein his answer and cross-petition, a copy of which is hereby attached, marked Exhibit "B" and incorporated by reference herein.

Thereafter George E. Burton as plaintiff in said Kansas action filed his answer to the cross-petition

of Lester W. Hurley as defendant therein, a copy of which answer to cross-petition is hereto attached, marked Exhibit "C" and incorporated by reference herein.

## XVI.

Thereafter the Kansas action proceeded to a trial of the issues joined by the pleadings on the part of the plaintiff therein, George E. Burton, and the plaintiff herein, Lester W. Hurley, copies of which are hereto attached and marked Exhibits "A", "B" and "C" as stated above.

Following trial of those issues, the United States District Court for the District of Kansas, made and filed written findings of fact and conclusions of law in said action, a copy [42] of which is hereto attached, marked Exhibit "D" and incorporated by reference herein.

Thereafter and on July 26, 1945, the United States District Court for the District of Kansas entered its judgment in said action in favor of the defendant therein and plaintiff herein, Lester W. Hurley, and against the plaintiff therein, George E. Burton. In and by said judgment it was ordered, adjudged and decreed by the court that the plaintiff herein, Lester W. Hurley, is the owner of an undivided one-half ( $1/2$ ) interest in and to five hundred seventy-five (575) shares of common stock in the Southern California Edison Company, Limited, described above in Paragraph III. A copy of the judgment in the Kansas action is hereto attached,

marked Exhibit "E" and incorporated by reference herein.

Prior to the commencement of plaintiff's action in this court the above mentioned judgment of the Kansas court had become and was final.

#### XVII.

In the above mentioned Kansas action, the United States District Court for the District of Kansas found and adjudicated that none of the assignments described above in Paragraph IX, purporting to have been executed by plaintiff herein covering his interest in the 575 shares of common stock described above in Paragraph III, "bore the true and genuine signature of Lester W. Hurley, but that each of said signatures of Lester W. Hurley appearing thereon is a forgery."

#### XVIII.

On October 15, 1945, plaintiff made written demand on defendant herein to pay to plaintiff one-third of the amount of all cash dividends, and one-third of the value of all stock rights declared and set aside to the holder or holders of the 575 shares of common stock described above in Paragraph III, to wit, the [43] dividends and stock rights listed and described above in Paragraphs XI and XII, together with legal interest thereon.

In response to plaintiff's demand, defendant requested time to investigate, but no payment has been made to plaintiff.



## XIX.

During the period from the receipt by defendant of dividend order No. 12743 on December 11, 1928, as set forth above in Paragraph VII, until the death of Elizabeth J. Price, defendant from time to time declared and set aside as payable to its shareholders certain dividends and stock rights.

The dividends so declared and set aside during that period to the holder or holders of the 191 shares of Series "B" six per cent preferred stock described above in Paragraph IV were as follows:

Item	Year	Amount of Dividend
1	1929	\$ 286.50
2	1930	286.50
3	1931	286.50
4	1932	286.50
5	1933	286.50
6	1934	286.50
7	1935	286.50
8	1936	286.50
9	1937	286.50
10	1938	286.50
11	1939	286.50
12	1940	286.50
13	1941	286.50
14	1942	286.50
15	1943 (to Dec. 27)	286.50

---

16 The aggregate value of all dividends so declared and set aside was and is.....\$4,297.50

The dividends so declared and set aside during that period to the holder or holders of the 88 shares of common stock described above in Paragraph IV were as follows:

Item	Year	Amount of Dividend
1	1929	\$ 176.00
2	1930	176.00
3	1931	176.00
4	1932	176.00
5	1933	176.00
6	1934	154.00
7	1935	132.00
8	1936	132.00
9	1937	143.00
10	1938	154.00
11	1939	154.00
12	1940	167.20
13	1941	154.00
14	1942	154.00
15	1943 (to Dec. 27)	132.00

---

16 The aggregate value of all dividends so declared and set aside was and is.....\$2,356.20

The stock rights so declared and set aside during that period to the holder or holders of the 88 shares of common stock described above in Paragraph IV were as follows:

17 In 1929 a total of 88 common stock rights then having a value of \$3.075 per right, or a total value of.....\$ 270.60

	were so declared and set aside	
18	In 1930 a total of 88 common stock rights then having a value of \$3.70 per right, or a total value of.....	325.60
	were so declared and set aside [45]	
19	In 1931 a total of 88 common stock rights then having a value of \$2.53 per right, or a total value of.....	222.54
	were so declared and set aside	
20	The aggregate value of all stock rights so declared and set aside was and is..\$	818.84
21	The aggregate value of all dividends and all stock rights so declared and set aside was and is.....	\$3,175.04

## XX.

The dividends and stock rights in the total sum of \$3,175.04, described above in Paragraph XIX, were paid to and delivered by defendant to Elizabeth J. Price under dividend order No. 12743 during the period from December 11, 1928, until the death of Elizabeth J. Price on December 27, 1943.

## XXI.

At all times since November 20, 1928, plaintiff's name, together with his post office address, has appeared on the records of defendant as one of the owners of the 191 shares of Series "B" six per cent preferred and the 88 shares of common capital stock described above in Paragraph IV.

Defendant did not, on November 20, 1928, or at

any time thereafter until following plaintiff's disaffirmance on March 20, 1944, have actual notice or knowledge of the fact that plaintiff was a minor at the time he executed dividend orders No. 12742 and No. 12743. [46]

## XXII.

All the dividends and stock rights listed above in Paragraph XIX were declared and set aside, and were paid and delivered by defendant to Elizabeth J. Price without any notice at any time to plaintiff and without any knowledge or authorization or consent on the part of plaintiff.

At all times mentioned above in Paragraph XIX plaintiff was the owner of an undivided one-third interest in the 191 shares of Series "B" six per cent preferred stock and the 88 shares of common stock, and was entitled to receive one-third of all dividends and stock rights declared and set aside, and later paid and delivered by defendant to Elizabeth J. Price, as stated above in Paragraph XX.

## XXIII.

At the time of the issuance of the certificates for 191 shares of Series "B" six per cent preferred stock and 88 shares of common stock referred to above in Paragraph IV, on November 20, 1928, plaintiff was a minor of the age of twenty years, and had no notice or knowledge of the issuance of any of the certificates. The certificates were never in the possession or under the control of plaintiff, and plaintiff did not know of his ownership of any

interest in any stock of the Southern California Edison Company, Limited, and did not know of the nature or purpose or effect or of the use made of the dividend order blanks signed by plaintiff at the request of Elizabeth J. Price, as stated above in Paragraph V, and did not know of the declaration or payment of any dividends or of the issuance of any stock rights on the 191 shares of Series "B" six per cent preferred stock or the 88 shares of common stock, and had no knowledge of any of the facts set forth above in Paragraphs IV, VII, XIX and XX, until March 18, 1944. [47]

#### XXIV.

On March 20, 1944, promptly following his first discovery and knowledge on March 18, 1944, of any of the facts set forth above in Paragraphs IV, VII, XIX or XX, plaintiff disaffirmed all the aforementioned transfers and dividend orders purported to have been executed by him.

#### XXV.

On October 15, 1945, plaintiff made written demand on defendant to pay plaintiff one-third of all the cash dividends, together with one-third of the value of all stock rights, declared and set aside on the 191 shares of Series "B" six per cent preferred stock and the 88 shares of common stock, to wit, the dividends and stock rights listed and referred to in Paragraphs XIX and XX above; but the defendant has failed and refused to pay the same or any part thereof.

Prior to the commencement of this action, on March 6, 1946, plaintiff demanded of defendant that defendant account for and deliver to plaintiff all dividends and stock rights declared and set aside by defendant for the owners of the 121 shares of Series "B" six per cent preferred stock and 88 shares of common stock described above in Paragraph IV, but defendant has failed and refused to account for or pay or deliver any part thereof.

Thereafter and on June 5, 1946, defendant made written demand upon plaintiff that plaintiff proceed against the Estate of Elizabeth J. Price, deceased, and against George E. Burton and that plaintiff pursue his remedy against the Estate of Elizabeth J. Price, deceased, and George E. Burton, and each of them, and defendant then and there informed plaintiff that in the event plaintiff failed so to pursue his remedy, defendant would deem itself exonerated to the extent to which it was thereby prejudiced. [48] Plaintiff has refused to proceed as requested, but the court finds that defendant has not been prejudiced thereby.

## XXVI.

That plaintiff was a minor at the time he signed dividend orders No. 12742 and No. 12743, and plaintiff received no consideration for the execution of either of the dividend orders, and the nature of the documents and the purpose for which they were to be used was concealed from the plaintiff at the time he signed said dividend orders and there-

after. That plaintiff's disaffirmance of the dividend orders under the circumstances hereinabove set forth in these findings of fact was made within a reasonable time after reaching his majority.

#### XXVII.

That defendant had no actual knowledge of the fraud hereinbefore found to have been perpetrated upon Lester W. Hurley by his grandmother, either at the time said fraud was perpetrated or thereafter, and the court further finds that defendant had no reason to believe that any fraud was being, or had been, so perpetrated.

#### XXVIII.

That under the respective dates of January 25, 1929, December 27, 1929, and December 19, 1930, a resolution of the Board of Directors of the Southern California Edison Company, Ltd., was adopted referring to the common and original preferred stockholders of this corporation of record on the respective dates of March 29, 1929, 28th day of February 1930, and the 27th day of February 1931, authorized the issue to the stockholders of record the stock rights described in Paragraph XI, items 17, 18, 19, 20 and 21 and Paragraph XIX items 17, 18, 19, 20 and 21.

That said respective resolutions further provided that warrants representing each stockholder's right to subscribe for and purchase said additional shares be issued in the name of the stockholder and mailed or delivered on or before April 22, 1929, March

25, [49] 1930, March 25, 1931, together with a letter setting forth the terms and conditions on which the said right to subscribe may be exercised, as set out in said resolutions, to each stockholder having such right of record on said 29th day of March, 1929; 28th day of February 1930, and 27th day of February, 1931; that all of said warrants representing right to subscribe for and purchase full shares be issued in the name of the stockholder and be assignable by endorsement and delivery of said warrant.

### Conclusions of Law

#### I.

The title to the 575 shares of common stock described in Paragraph III of the findings of fact was litigated and fully and finally adjudicated in that certain action in the United States District Court for the District of Kansas, entitled "George E. Burton, plaintiff v. Lester W. Hurley, defendant" and numbered 4974; and the findings of the United States District Court for the District of Kansas that each of the signatures "Lester W. Hurley" appearing on the forms of assignment described above in Paragraph IX of the findings of fact is a forgery and that none of the purported assignments bear the true and genuine signature of the plaintiff herein is final and *res judicata* as between the plaintiff herein and George E. Burton; and both that finding and the judgment of the United States District Court for the District of Kansas decreeing plaintiff to be "the owner of an undivided one-half



(1/2) interest in and to five hundred seventy-five (575) shares of common stock in the Southern California Edison Company, Limited” are final and binding and res judicata as between plaintiff and defendant herein. [Perkins vs. Benguet Mining Co., 55 Cal. App. (2d) 720, 747-53. 132 P. (2d) 70 (1942); Commercial Nat. Bank v. Alleway, 207 Iowa 419, 223 N.W. 167 (1929).]

## II.

The finding of the United States District Court for the [50] District of Kansas, “That the dividend order dated November 19, 1928, and filed with the Southern California Edison Company, Limited, on December 11, 1928, does not bear the true and genuine signature of Lester Hurley, but that the purported signature of Lester Hurley appearing thereon is a forgery,” being dividend order No. 12742 set forth above in Paragraph VII of the findings of fact, must be considered a gratuitous finding of fact and therefore not res judicata, since the validity of dividend order No. 12742 was not placed in issue by the pleadings in that action and was not a matter necessary to be adjudicated in determining that action. [Garwood v. Garwood, 29 Cal. 514 (1866); Lang v. Lang 182 Cal. 765, 768, 190 Pac. 181 (1920); Hutchison v. Reclamation District, 81 Cal. App. 427, 437, 254 Pac. 606 (1927); Cf. Baar v. Smith, 201 Cal. 87, 99, Pac. 827 (1927).]

## III.

From November 20, 1928 until the death of Elizabeth J. Price on December 27, 1943 plaintiff was the owner of an undivided one-third interest in the 575 shares of common stock described above in Paragraph III of the findings of fact, and was likewise the owner of an undivided one-third interest in the 191 shares of Series "B" six per cent preferred stock and the 88 shares of common stock described above in Paragraph IV of the findings of fact.

## IV.

Since the death of Elizabeth J. Price on December 27, 1943, plaintiff has been, and at the commencement of this action was the owner of an undivided one-half interest in the 575 shares of common stock described above in Paragraph III of the findings of fact, and was likewise the owner of an undivided one-half interest in the 191 shares of Series "B" six per cent preferred stock and [51] the 88 shares of common stock described above in Paragraph IV of the findings of fact.

## V.

Dividend orders No. 12742 and No. 12743 constituted orders which were voidable under the law of California, as well as under the law of Missouri at the election of said minor within a reasonable time after reaching his majority.

## VI.

According to the law of California which governs this case [*Erie R. R. Co. v. Thompkins*, 304 U. S. 64, 78 (1938)], the validity of the dividend orders is to be determined by the law of Missouri where plaintiff executed them. [*Fenton v. Edwards*, 125 Cal. 43, 58 Pac. 320 (1899); Calif. Civ. Code, Sec. 3453; cf. Restatement, Conflict of Laws, Secs. 49, 255, 256, 283.]

## VII.

Inasmuch as plaintiff was a minor at the time he signed dividend orders No. 12742 and No. 12743, and plaintiff received no consideration for the execution of either of the dividend orders, and the nature of the documents and the purpose for which they were to be used was concealed from plaintiff at the time he signed said dividend orders and thereafter, plaintiff's disaffirmance of the dividend orders under the circumstances hereinabove set forth in the findings of fact was made within a reasonable time after reaching his majority.

## VIII.

From November 20, 1928 until the death of Elizabeth J. Price on December 27, 1943, plaintiff was the owner of, and was entitled to receive and be paid, one-third of all dividends declared and paid on the 575 shares of common stock described above in Paragraph III of the findings of fact, and on the 191 shares of preferred stock and 88 shares of common stock described above in Paragraph IV of

the findings of fact, together with one-third of [52] all stock rights declared and issued to the owners of said stock.

### IX.

Neither the four-year period of limitations specified in subsection 1 of Sec. 337, nor the two-year period of limitations specified in subsection 1 of Sec. 339 of the California Code of Civil Procedure commenced to run against plaintiff's cause of action asserted herein until after October 15, 1945, the date of plaintiff's demand of defendant for payment of his one-third share of all dividends and stock rights. Accordingly, plaintiff's cause of action herein is not barred by the applicable California statutes of limitations. [*Macdermott v. Hayes* 175 Cal. 95, 118, 170 Pac. 616 (1917); *Ralston v. Bank*, 112 Cal. 208, 44 Pac. 476 (1896); cf. *Perkins v. Benguet Mining Co.*, supra, 55 Cal. App. (2d) at 770.]

### X.

The failure of plaintiff, after demand by defendant, to pursue his rights against George E. Burton and the Estate of Elizabeth J. Price, deceased, does not exonerate defendant from liability in this action.

### XI.

That pursuant to the provisions of Section 1475 of the Civil Code of the State of California, defendant discharged its obligations to the plaintiff herein as an owner in joint tenancy of stock in the defendant corporation by its payment of dividends

to, and delivery of stock rights to, or upon the order of, Elizabeth J. Price, joint tenant and joint obligee; that neither said dividends nor stock rights constituted "deposits" in the hands of the defendant and are, therefore, not controlled by the provisions of the California Civil Code relating to deposits.

## XII.

If Section 1475 of the California Civil Code were not [53] applicable in this case, plaintiff would be entitled to recover one-third of all dividends declared and set aside by defendant on the 575 shares of common stock described above in Paragraph III of the findings of fact, to-wit, the sum of \$5,036.04; together with the value of one-third of all stock rights declared and set aside to the owners of the 575 shares of stock, to-wit, the sum of \$1,783.46; together with one-third of all dividends declared and set aside by defendant on the 191 shares of preferred stock, to-wit, the sum of \$1,432.50, and the 88 shares of common stock described above in Paragraph IV, to-wit, the sum of \$785.40; together with one-third of the value of all stock rights declared and set aside to the owners of the 88 shares of common stock, to-wit, the sum of \$272.95; or the total sum of \$9,310.35, together with interest thereon at the rate of seven per cent per annum from October 15, 1945. [Telegraph Co. v. Davenport, 97 U. S. 369 (1878); Cooper v. Spring Valley Water Co., 171 Cal. 158, 153 Pac. 936 (1915); Taft v. Presidio & F. R. Co., 84 Cal. 131, 24 Pac. 436

(1890) ]; but plaintiff would not be entitled to interest prior to the date of his demand on defendant for payment of the dividends, which demand was made on October 15, 1945. [Perkins v. Benguet Mining Co. supra, 55 Cal. App. (2d) at 765.]

Let judgment be entered for the defendant accordingly.

April 26, 1949.

/s/ WM. C. MATHES,

United States District Judge.

Approved as to form pursuant to Rule 7: April 25, 1949.

/s/ [Illegible.]

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EXHIBIT "A"

In the District Court of the United States  
For the District of Kansas

No. 4974

GEORGE E. BURTON,

Plaintiff

vs.

LESTER W. HURLEY and SOUTHERN CALIFORNIA EDISON COMPANY, LIMITED,  
a corporation,

Defendants

COMPLAINT

George E. Burton, who is a citizen of the State of Kansas residing at 1046 Ann Avenue in the City

of Kansas City, Wyandotte County, Kansas, brings his complaint against Lester W. Hurley, a citizen of the State of Missouri, who resides at 9522 Cloverhurst Drive, St. Louis County, Missouri, and against Southern California Edison Company, Limited, a corporation duly organized and existing under and by virtue of the laws of the State of California, and states:

1. The grounds upon which the jurisdiction of the Court depends are: diversity of citizenship between the parties hereto, and the amount in controversy herein exceeds \$3,000.00, and as grounds for jurisdiction in equity plaintiff avers that he seeks to quiet title to personal property upon the facts hereinafter particularly set out, and that in the premises he has no plain, adequate or complete remedy at law.

2. Plaintiff further states that he is the legal and equitable owner of and has the possession of the following described personal property, to-wit: 575 shares of common capital stock of Southern California Edison Company, Ltd., as evidenced by the following numbered certificates, to-wit:

- Certificate No. A9230 for 100 shares
- No. A9231 for 100 shares
- No. A9232 for 100 shares [55]
- No. A9233 for 100 shares
- No. A9234 for 100 shares
- No. AO61852 for 75 shares

3. That on February 19, 1929, pursuant to the

direction of and assignment by the then holders thereof, said certificates of stock were transferred to Elizabeth J. Price and George E. Burton, the plaintiff herein, as joint tenants thereof with full rights of survivorship, and said certificates were so held until December 27, 1943. That on said last mentioned date said Elizabeth J. Price died and thereupon said joint tenancy title terminated and this plaintiff became the owner thereof.

4. That thereafter the plaintiff herein through the Commercial National Bank of Kansas City, Kansas forwarded the above described certificates, properly endorsed for transfer on the transfer books of Southern California Edison Company, Ltd., to the individual name of the plaintiff herein with directions that said action be taken.

5. That said transfer was denied by said company for the reason that the defendant, Lester W. Hurley, had filed with said company an objection to said transfer on the alleged ground that the transfer of February, 1929, referred to herein, was obtained by fraud on said Lester W. Hurley and that said Lester W. Hurley claimed a lien upon or interest in said personal property.

6. That the exact nature of the claim of said Lester W. Hurley as basis for said objection is unknown to this plaintiff, but plaintiff alleges that any claim of the defendant Lester W. Hurley of a lien or interest, actual or contingent, in or to said personal property is inferior, subject and junior to the title of the plaintiff herein.



7. That said claim of the defendant Lester W. Hurley constitutes a cloud on plaintiff's title to said personal property, and the title of the plaintiff herein should be quieted as against all claims or demands of the said defendant, Lester W. Hurley, herein. \* [56]

8. That Southern California Edison Company, Ltd., has refused to make transfer of the certificates of stock mentioned herein to the name of this plaintiff until said alleged claim or lien of the defendant, Lester W. Hurley, in or to said personal property is settled or withdrawn.

Wherefore, plaintiff prays for the following relief: (1) A decree of Court excluding and barring the defendant Lester W. Hurley from any interest in, claim to or lien upon said personal property and quieting the title of the plaintiff to said personal property; (2) enjoining said defendant, Lester W. Hurley, from claiming any interest in or lien upon said personal property; (3) a decree of Court ordering and enjoining the defendant, Southern California Edison Company, Ltd., to transfer said shares of stock to the name of plaintiff herein upon presentation of said certificates. Plaintiff prays for such other and further relief as to the Court may seem just and equitable.

STANLEY, STANLEY,  
SCHROEDER, WEEKS &  
THOMAS

By LEE E. WEEKS

Attorneys for Plaintiff

1106 Huron Building

Kansas City 10, Kansas

Attest: A true copy. Filed June 2, 1944.

HARRY M. WASHINGTON,  
Clerk. [57]

EXHIBIT "B"

In the District Court of the United States for the  
District of Kansas, First Division.

Civil Action No. 4974

GEORGE E. BURTON,

Plaintiff,

vs.

LESTER W. HURLEY and SOUTHERN CALI-  
FORNIA EDISON COMPANY, LTD.,

Defendants.

ANSWER AND CROSS-PETITION OF  
LESTER W. HURLEY.

Now comes Lester W. Hurley, a citizen and resi-  
dent of the State of Missouri, and for his answer  
and cross-petition alleges and states:

First Defense.

1. Defendant Lester W. Hurley admits the al-  
legations of jurisdiction stated in Paragraph 1 of  
plaintiff's complaint and allegations stated in Para-  
graph 5; denies the allegations stated in paragraph  
2 insofar as it is alleged that plaintiff is the legal  
and equitable owner of 575 shares of stock de-  
scribed; denies the allegation stated in paragraph  
3 insofar as it is alleged that the certificates de-

scribed in paragraph 2 were transferred to Elizabeth J. Price and George E. Burton on February 19, 1929, as joint tenants with full rights of survivorship. Admits, however, that Elizabeth J. Price died on December 27, 1943, but denies that thereupon George E. Burton became the owner of the certificates described in paragraph 2 of plaintiff's complaint; also denies the allegations stated in paragraphs 6 and 7; allege that defendant Hurley is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraphs 4 and 8. Further denies each and every other allegation contained in said complaint. [58]

#### Second Defense.

2. Defendant Lester W. Hurley alleges that on November 28, 1928, there was duly issued by defendant corporation to Elizabeth J. Price, George E. Burton and Lester Hurley as joint tenants with full rights of survivorship, 575 shares of common stock in defendant corporation, being certificates No. AO-59630, AO-59635, and A-8752 to 8756 inclusive; that on November 20, 1928, Lester Hurley became the owner of said stock in joint tenancy with Elizabeth J. Price and George E. Burton, with full rights of survivorship.

3. Defendant further alleges that he was not informed and did not know that the said stock was so issued to him and never learned said fact until on or about March 18, 1944; that defendant Hurley has not sold, transferred or assigned all or any

part of his interest in said stock; that the certificates issued on February 19, 1929, were issued without his authorization, knowledge or consent.

4. Defendant further alleges that on February 19, 1929, he was a minor under the age of 21 years unmarried, and living with his father; that he has no recollection or memory of endorsing or assigning all or any one of the last above described certificates and denies that he endorsed said certificates or any one of them; alleges that he received no consideration for said purported endorsement or assignment.

5. Defendant further states that if all or any one of said certificates bears his genuine signature the same was procured and obtained by George E. Burton and Elizabeth J. Price through fraud, artifice, deceit and misrepresentation of such a character that he did not know and did not understand the purpose or object for which said signatures [59] were procured; that in no event were all or any one of said signatures placed upon said certificates as his voluntary, free act and deed for the purpose of transferring or assigning all of any part of his interest in and to said stock; that said purported assignments were promptly disaffirmed and repudiated upon learning of their existence.

Wherefore, having fully answered, defendant prays that plaintiff's complaint be dismissed and that plaintiff take nothing by reason thereof, and that defendant have and recover his costs and charges herein expended.

Cross-Petition.

6. Defendant further states that George E. Burton is the son of Elizabeth J. Price; that George E. Burton is the uncle of Lester W. Hurley; that Elizabeth J. Price is now deceased, having departed this life on December 27, 1943.

7. Defendant further states that William Price, the former husband of Elizabeth J. Price was during his lifetime the owner of a substantial amount of stock in the Southern California Edison Company, Ltd.; that on November 20, 1928, under the direction of William Price there were issued to Elizabeth J. Price, George E. Burton and Lester Hurley, as joint tenants with full rights of survivorship, certificates No. AO-59630, AO-59635 and A-8752 to A-8756 inclusive, which certificates totaled 575 shares of common stock in the Southern California Edison Co., Ltd., of the par value of \$25.00 per share; that at the time said stock was issued William Price resided in California and defendant resided in Kansas City, Missouri.

8. Defendant further states that thereupon the said Elizabeth J. Price, George E. Burton and Lester Hurley became the owners, in joint tenancy with full rights of survivorship, of all of said stock represented by the above [60] designated certificates; that said certificates so issued were delivered to Elizabeth J. Price.

9. Defendant further states that at no time were said certificates in the possession or control of Lester Hurley; that at no time were said certificates

presented to or examined by Lester Hurley, defendant herein.

10. Defendant further states that thereafter and on January 5th, 1929, William Price died, and was survived by his then wife, Elizabeth J. Price.

11. Defendant further states that promptly following the death of William Price, and for the purpose of cheating and defrauding the plaintiff out of his entire right, ownership and interest in and to the aforesaid 575 shares of common stock and the certificates No. A-8752 to A-8756 inclusive, and certificates AO-59635 and AO-59630 representing said stock, the said Elizabeth J. Price and George E. Burton did on the 19th day of February, 1929, present to the defendant corporation the aforesaid seven certificates, purporting to bear on the back of each certificate an assignment and power of attorney authorizing the defendant company to transfer said certificates to Elizabeth J. Price and George E. Burton, as joint tenants with full rights of survivorship, thereby attempting to eliminate and destroy all the right, title and ownership of defendant therein.

12. Defendant further states that on February 19, 1929, the above designated certificates were cancelled on the books of defendant company, and certificates No. AO-61852 and A-9230 to A-9234 inclusive, for 575 shares of common stock in defendant company, of the par value of \$25.00 per share, were issued to Elizabeth J. Price and George E. Burton, as joint tenants with full right of survivorship, in

the place and stead of the first above [61] designated certificates.

13. Defendant further states that said purported assignment and power of attorney was and is void and of no force and effect to bind the defendant herein or effect an assignment or transfer of said shares or authorize and empower the defendant corporation to cancel the same and issue new stock in lieu thereof; that defendant Hurley at no time executed or authorized the execution of all or any one of the purported powers of attorney and assignments appearing on the back of the aforesaid certificates; that said certificates bearing said purported assignment and power of attorney were never at any time presented to the defendant for his signature and were not signed by him; that the purported signatures of Lester Hurley appearing on the back of each of said certificates is a forgery; that no consideration of any kind or character was at any time paid to or received by defendant Hurley for the purported execution of the aforesaid assignment and power of attorney; that at the time said purported assignment was made the defendant herein was a minor under the age of 21 years and residing with his father, William Hurley at 5716 Scarritt Avenue, Kansas City, Missouri.

14. Defendant Hurley adopts by reference the allegations contained in paragraph 5 hereof.

15. Defendant further states that during the lifetime of Elizabeth J. Price, the defendant was never given any information as to the existence of the

aforesaid 575 shares of stock; that he had no knowledge or information as to the name or names in which the above designated 575 shares of stock stood; that defendant was led to believe by Elizabeth J. Price and George E. Burton that some stock in the defendant company might come to the defendant upon the[62] death of Elizabeth J. Price if and provided Elizabeth J. Price did not prior to her death direct otherwise; that the fact that the above described 575 shares of stock in the defendant corporation had been transferred to Lester Hurley by William Price on November 20, 1928, in joint tenancy with Elizabeth J. Price and George E. Burton with full rights of survivorship, was carefully secreted and at no time disclosed.

16. Defendant further states that in furtherance of the scheme and conspiracy aforesaid, to cheat and defraud the defendant out of his legal and lawful interest in said stock, Elizabeth J. Price and her son, George E. Burton promptly following the death of William Price, engaged in a program of deceit and misrepresentation to cover up the transfer to themselves of defendant's entire interest in said stock; that at about the time said stock was transferred to defendant on November 20, 1928, it was represented to defendant by Elizabeth J. Price and George E. Burton (and plaintiff was led to believe and did believe) that Elizabeth J. Price had made some arrangement with the defendant corporation by which she was to draw all dividends during her lifetime on stock owned by her in said company and



that upon her death the defendant might receive some benefit or interest in said stock, the exact nature and amount to depend upon her feeling toward defendant up to the time of her death; that defendant was led to believe and made to understand that any effort on his part to inquire into her business affairs or financial arrangements would result in unfavorable consideration of defendant by Elizabeth J. Price in the disposition of the stock owned by her in the defendant corporation; that defendant was led to believe and did believe that Elizabeth J. Price's imperious manner and[63] intense resentment at the slightest inquiry by plaintiff as to her financial arrangements was merely a part of her personality.

. 17. Defendant further states that the representation so made to the defendant by Elizabeth J. Price and George E. Burton that whatever interest or benefit he might derive from stock in defendant company at any time owned by her or William Price would depend on her feeling toward him at the time of her death was false, fraudulent and untrue and known by Elizabeth J. Price and George E. Burton to be untrue when made; that said representations were made for the purpose of controlling the defendant and deceiving him as to his interest and ownership in the aforesaid 575 shares of stock; that said representations were further made to prevent the defendant from asking any questions or making any inquiry that might bring to light or disclose defendant's ownership and interest in and to the

aforesaid stock and the fraudulent transfer attempted on February 19, 1929; that Elizabeth J. Price and George E. Burton well knew that the ownership of the 575 shares of stock was vested in the defendant on November 20, 1928, in joint tenancy with Elizabeth J. Price and George E. Burton and that his rights therein in no way depended upon the will, humor or caprice of Elizabeth J. Price; that said pretense that his ultimate interest would depend upon the will and favor of Elizabeth J. Price was maintained through the years in order that the defendant might be made to feel that any act or inquiry by defendant that was displeasing to Elizabeth J. Price would result in the loss by defendant of any benefits which he might otherwise secure; that as a result of said deceit and misrepresentations defendant made no inquiry concerning said stock in defendant company until after the death of Elizabeth [64] J. Price.

18. Defendant further states that upon the death of Elizabeth J. Price, George E. Burton informed the defendant herein that he was the owner, in joint tenancy with George E. Burton, of 191 shares of preferred stock in defendant company represented by certificates No. A-10216, AO-86998, and AO-87011, and 88 shares of common stock represented by certificates No. AO-59759 and AO-59770; that shortly thereafter George E. Burton requested the defendant to endorse the last above designated certificates in blank and deliver said certificates to the said George E. Burton, which defendant on advice of counsel refused to do.

19. Defendant further states that since the death of Elizabeth J. Price, defendant George E. Burton has continued his efforts to keep the existence of said 575 shares of stock secret; that although George E. Burton filed in the Probate Court of Wyandotte County, Kansas, on January 5, 1944, an inventory purporting to list the stock held by Elizabeth J. Price and George E. Burton in joint tenancy at the time of the death of Elizabeth J. Price and did list 323 shares of stock so held, nevertheless the 575 shares of stock were secreted and not disclosed and were entirely omitted from said inventory.

20. Defendant further states that by reason of the actions and conduct of George E. Burton and on the advice of counsel, an application was made to defendant company for a report as to what the stock record of said company showed as to his ownership and interest in and to stock in said company; that upon the receipt of said report in March 1944, defendant learned for the first time that the aforesaid 575 shares of stock were placed in his name on November 20, 1928, and thereafter cancelled on the books of defendant [65] company and certificates AO-61852 and A9230 to A-9234 inclusive, were issued to Elizabeth J. Price and George E. Burton on February 19, 1929 in the place and stead of said cancelled certificates.

21. Defendant further states that thereupon defendant gave prompt notice by telegraph to defendant company that said transfer on February 19,

1929, was illegal, unlawful and void and made without his knowledge and consent; that said purported transfer was disaffirmed and repudiated by defendant on March 19, 1944.

22. Defendant further states that he has never parted with his ownership or interest in the 575 shares represented by certificates A-8752 to A-8756 inclusive, and certificates AO-59635 and AO-59630; that certificates No. AO-61852 and A-9230 to A-9234 inclusive, were issued to Elizabeth J. Price and George E. Burton illegally and unlawfully on February 19, 1929, without the surrender of certificates No. A-8752 to A-8756 inclusive, and certificates AO-59635 and AO-59630, duly and legally endorsed by him; that said certificates issued on February 19, 1929, are void and should be cancelled and for naught held.

23. Defendant further states that he is still the lawful owner in joint tenancy with George E. Burton of certificates A-8752 to A-8756 inclusive, and AO-59635 and AO-59630 and that said certificates should be reinstated on the books of the defendant company by the issuance of new certificates for 575 shares of common stock in the name of George E. Burton and Lester Hurley as joint tenants with full right of survivorship, as evidence of said ownership and interest.

24. Defendant further states that he is without a complete and adequate remedy at law and must depend upon [66] the equitable jurisdiction of this court to relieve him from the cloud placed on his

title and ownership in the 575 shares of stock issued on November 20, 1928, and to protect and maintain his rights and ownership in joint tenancy with full rights of survivorship, as well as to prevent the further transfer on books of defendant company, or the assignment by George E. Burton of the certificates illegally issued to him and Elizabeth J. Price on February 19, 1929; that defendant will suffer irreparable loss, injury and damage unless defendants are restrained and enjoined by this court from assigning or transferring said illegal certificates, now in the hands of George E. Burton, and unless said illegal certificates are by this court ordered cancelled and for naught held.

Wherefore, Defendant Lester W. Hurley prays that this court find and direct:

1. That the defendants and each of them be enjoined from proceeding directly or indirectly in any manner with the transfer or assignment of certificates AO-61852, A-9230 to A-9234 inclusive.

2. That the court decree that the aforesaid certificates number AO-61852, A-9230 to A-9234 inclusive bearing date of February 19, 1929, be declared illegal and void and that the same be cancelled and for naught held.

3. That the plaintiff be ordered and directed to surrender said cancelled certificates number AO-61852, A-9230 to A-9234 inclusive to the defendant, Southern California Edison Company, Ltd., with directions from the plaintiff herein that the original certificates A-8752 to A-8756 inclusive, and AO-

59635 and AO-59630 be reissued in their original form or that equivalent certificates be issued therefor. [67]

4. That defendant company be ordered and directed to reinstate on the books of the company the 575 shares of stock represented by certificates A-8752 to A-8756 inclusive, and AO-59635 and AO-59630, and as evidence of the reinstatement thereof that said company be ordered to issue new certificates to George E. Burton and Lester Hurley for 575 shares of common stock, in joint tenancy with full rights of survivorship, of the par value of \$25.00 per share, and that plaintiff have such further and other relief as he may in equity and good conscience be entitled, together with his costs and charges herein expended.

THURMAN L. McCORMICK,  
RICE, MILLER & HYATT,

Attorneys for

Lester W. Hurley.

Received copy of the above Answer and Cross-Petition this 11th day of July, 1944, and service of the same is hereby acknowledged.

STANLEY, STANLEY,  
SCHROEDER, WEEKS &  
THOMAS,

By SCHROEDER,

Attorneys for Plaintiff.

EXHIBIT "C"

In the District Court of the United States  
for the District of Kansas

Civil Action No. 4974

GEORGE E. BURTON,

Plaintiff,

vs.

LESTER W. HURLEY,

Defendant.

PLAINTIFF'S ANSWER TO CROSS-PETITION OF DEFENDANT, LESTER W. HURLEY

Comes now George E. Burton, plaintiff, and for his answer to the cross-petition of defendant, Lester W. Hurley, states:

1. Plaintiff admits the allegations in the paragraphs of the cross-petition numbered 6, 7, 10 and 12.

2. Plaintiff denies the allegations in the paragraphs of the cross-petition numbered 13, 14, 15, 16, 17, 22, 23 and 24.

3. Plaintiff has no information or knowledge thereof sufficient to form a belief as to the truth of the allegations in the paragraphs of the cross-petition numbered 9 and 20.

4. Plaintiff denies the allegations in the paragraph of the cross-petition numbered 8 and alleges that the stock certificates referred to therein were issued in the names of Elizabeth J. Price, George

E. Burton and Lester Hurley as joint owners with full rights of survivorship through a mistake on the part of officers and agents of Southern California Edison Company, Limited, and that in truth and in fact the said officers and agents of the said Southern California Edison Company, Limited, had been directed by William Price and Elizabeth J. Price, the owners [69] of the stock represented by said certificates, to issue the said certificates to Elizabeth J. Price and George E. Burton in joint ownership with full rights of survivorship.

5. Plaintiff denies the allegations in the paragraph of the cross-petition numbered 11 and alleges that on a date in February, 1929, the exact date being unknown to plaintiff, but prior to the 19th day of February, 1929, the defendant Lester W. Hurley, for the purpose of correcting the mistake of the officers and agents of the Southern California Edison Company, Limited, as alleged in the preceding paragraph, did make and execute assignments and powers of attorney authorizing the transfer of the stock referred to in paragraph number 11 of defendant's cross-petition to Elizabeth J. Price and this plaintiff as joint owners with full rights of survivorship.

6. Plaintiff admits the allegations in the paragraph of the cross-petition numbered 18 that shortly after the death of Elizabeth J. Price on December 27, 1943, plaintiff informed the defendant Lester W. Hurley that plaintiff and defendant were joint owners of 191 shares of preferred stock in the



Southern California Edison Company, Limited, represented by certificates Nos. A-10216, AO-86998 and AO-87011, and 88 shares of common stock of the same company represented by certificates Nos. AO-59759 and AO-59770; and that plaintiff requested defendant to join with him in assignments and powers of attorney for the purpose of authorizing them to divide the stock between plaintiff and defendant by issuing separate certificates to each.

7. Plaintiff denies the allegations in the paragraph of the cross-petition numbered 19 and alleges the facts to be that the inventory referred to in said paragraph did not purport to list all stock held by Elizabeth J. Price [70] and plaintiff as joint owners at the time of the death of Elizabeth J. Price, but that the said inventory was an inventory of the contents of a safe deposit box and did list all stock found in the said safe deposit box at the time that it was opened by plaintiff and a representative of the Probate Court of Wyandotte County, Kansas.

8. Plaintiff has no information or knowledge sufficient to form a belief as to the truth of allegations in the paragraph of the cross-petition numbered 21, except that plaintiff has been informed by the Southern California Edison Company, Limited, that defendant Lester W. Hurley had notified the said company that he claimed that the transfer of stock made on February 19, 1929, was made without his knowledge and consent.

9. Plaintiff denies each and every allegation contained in said cross-petition except those herein specifically admitted to be true.

10. For a further separate and distinct defense to said cross-petition plaintiff alleges that all and every of the matters alleged in the cross-petition are matters which may be tried and determined at law and with respect to which defendant is not entitled to any relief from a court of equity, as the defendant has a complete and adequate remedy at law for damages against plaintiff; that plaintiff is financially solvent and able to respond in damages.

11. For a further separate and distinct defense to said cross-petition plaintiff alleges that by the provisions of Section 60-306 of the General Statutes of the State of Kansas, in which State the alleged cause of action accrued, it is provided that an action for taking personal property including actions for the specific recovery of personal property or an action for injury to the rights of another not arising on contract or an action for relief on the ground of fraud can only be brought within two years after the cause of action accrued; except that the cause of action in cases of fraud shall not be deemed to have accrued until the discovery of the fraud; that defendant has known all of the facts surrounding the transfer of stock represented by the certificates of stock in the Southern California Edison Company, Limited, bearing numbers A9230, A9231, A9232, A9233, A9234 and AO61852, since the month of February, 1929; that the cause of action stated in said cross-petition, which arose and accrued in said State of Kansas, so accrued more than two years before the commencement of this

action and was, when commenced, wholly barred and extinguished by the statute of said State before the commencement of this action and before the filing of defendant's cross-petition herein; that during all of the time after the said cause of action accrued this plaintiff has resided continuously in the State of Kansas and was there at all times amenable to service upon him of civil process and was in said State when the said cause of action was extinguished by the running of the statute of limitations. That by the provisions of Section 60-307 of the General Statutes of the State of Kansas it is provided that if a person entitled to bring an action other than for the recovery of real property, except for a penalty or a forfeiture, be at the time the cause of action accrued under any legal disability, every such person shall be entitled to bring such action within one year after such disability shall be removed.

12. For a further separate and distinct defense to said cross-petition plaintiff alleges that if defendant ever had any cause of action against this plaintiff by reason of any of the allegations in said cross-petition, [72] such cause of action accrued about fifteen years before the filing of said cross-petition, as appears on the face of said cross-petition, and is long since barred by laches and should not now be permitted to be asserted in a court of equity.

Wherefore, having fully answered the cross-petition herein, plaintiff renews the prayer of his

complaint and further prays that defendant's cross-petition be dismissed and that defendant take nothing by reason thereof.

STANLEY, STANLEY,  
SCHROEDER, WEEKS &  
THOMAS,  
Attorneys for Plaintiff.

Service of copy acknowledged this 30th day of November, 1944, and consent to file out of time granted.

RICE, MILLER & HYATT,  
Attorneys for Defendant.

EXHIBIT "D"

In the District Court of the United States  
for the District of Kansas

Civil Action No. 4974

GEORGE E. BURTON,  
Plaintiff,  
vs.

LESTER W. HURLEY,  
Defendant.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Now on this day this cause having been heretofore taken under advisement and the Court now being

fully advised, makes specific findings of fact and conclusions of law, as follows:

### Findings of Fact

1. That upon the death of William Price on January 5, 1929, five hundred seventy-five (575) shares of stock in the Southern California Edison Company, Ltd. represented by certificates dated November 20, 1928, and bearing numbers AO59630, AO59635 and A8752 to A8756 inclusive, were owned by Elizabeth J. Price, George E. Burton and Lester Hurley as joint tenants with full rights of survivorship.

2. That Elizabeth J. Price died on the 27th day of December, 1943.

3. That upon February 19, 1929, there was issued by the Southern California Edison Company, Ltd. certificates bearing numbers AO61852 and A9230 to A9234 inclusive, for five hundred seventy-five (575) shares of common stock in the Southern California Edison Company, Ltd. to Elizabeth J. Price and George E. Burton with full rights of survivorship, without the surrender of certificates dated November 20, 1928, bearing numbers AO59630, AO59635 and A8752 to A8756 inclusive, properly endorsed.

4. That January 19, 1929, was Saturday and the Brotherhood State Bank of Kansas City, Kansas, closed at 12 o'clock noon on said day.

5. That none of said purported "Assignments and Irrevocable Powers of Attorney" attached to each of the certificates designated in paragraph 1 hereof bear the true and genuine signature of Les-

ter W. Hurley, but that each of said signatures of Lester W. Hurley appearing thereon is a forgery.

6. That no consideration of any character was ever paid by Elizabeth J. Price or George E. Burton to Lester W. Hurley, nor was any consideration of any character ever received by Lester W. Hurley from any other source for the transfer of the interest of Lester W. Hurley in the five hundred seventy-five (575) shares of stock described in paragraph 1 hereof.

7. That Lester W. Hurley had no knowledge that he owned or had any interest in the certificates designated in paragraph 1 hereof representing five hundred seventy-five (575) shares of stock in the Southern California Edison Company Ltd. until March 18, 1944.

8. That at the time of the aforesaid attempted transfer of the above designated stock certificates Lester W. Hurley was a minor under the age of twenty-one (21) years.

9. That upon March 20, 1944, Lester W. Hurley disaffirmed the purported transfer of the above designated stock certificates, which disaffirmance was made within a reasonable time after reaching his majority.

10. That the dividend order dated November 19, 1928, [75] and filed with the Southern California Edison Company, Limited, on December 11, 1928, does not bear the true and genuine signature of Lester Hurley, but that the purported signature of Lester Hurley appearing thereon is a forgery.

11. That the statements and conduct of Elizabeth J. Price and George E. Burton were calculated to and did conceal from the defendant herein the fact that he was the owner of an interest in the above designated five hundred seventy-five (575) shares of stock represented by the aforesaid certificates as well as the fact that an attempt had been made on January 19, 1929, to transfer said stock to Elizabeth J. Price and George E. Burton as Joint tenants with full rights of survivorship.

12. That Lester W. Hurley had no knowledge that the dividend order dated November 19, 1928, existed until March 18, 1944.

### Conclusions of Law

1. That defendant, Lester W. Hurley, is in no manner bound by the "Assignment and Irrevocable Power of Attorney" attached to each of the certificates of stock issued by the Southern California Edison Company, Limited, on November 20, 1928, being certificates numbered AO59630, AO59635 and A8752 to A8756, inclusive, as said assignments and each of them are void and of no force and effect.

2. That the defendant, Lester W. Hurley, is the owner of an undivided one-half ( $\frac{1}{2}$ ) interest in the aforesaid five hundred seventy-five (575) shares of common stock of the Southern California Edison Company, Limited, or to two hundred eighty seven and one half shares of said stock.

3. That the issue of stock certificates dated February 19, 1929, bearing numbers AO61852 and

A9230 to A9234 [76] inclusive, were fraudulently procured and are therefore void.

4. That Lester W. Hurley is in no manner bound by the dividend order dated November 19, 1928, and that said dividend order, insofar as it purports to be an order on the part of Lester W. Hurley to pay said dividends to Elizabeth J. Price, is void and of no force or effect.

EDGAR S. VAUGHT,  
U. S. District Judge.

Approved:

THURMAN L. McCORMICK,  
RICE, MILLER & HYATT,  
By THOMAS C. LYSAUGHT,  
Attorneys for Defendant.

Service of copy of the within Findings of Fact and Conclusions of Law prepared by attorneys for defendant acknowledged this 21st day of June, 1945.

STANLEY, STANLEY,  
SCHROEDER, WEEKS  
& THOMAS,  
By ARTHUR J. STANLEY, JR.,  
Attorneys for Plaintiff.

Filed July 26, 1945.

/s/ HARRY M. WASHINGTON,  
Clerk.



In the District Court of the United States  
For the District of Kansas

Civil Action No. 4974

GEORGE E. BURTON,

Plaintiff,

vs.

LESTER W. HURLEY,

Defendant.

### JUDGMENT

Now on this day, this cause having heretofore been fully heard by the Court (a jury having been duly waived) and thereafter taken under advisement and the Court now being fully advised finds the issues herein and each of them in favor of the defendant, Lester W. Hurley and against the plaintiff, George E. Burton.

It Is Therefore Ordered, Adjudged and Decreed by the Court that Defendant, Lester W. Hurley, is the owner of an undivided one-half ( $\frac{1}{2}$ ) interest in and to five hundred seventy-five (575) shares of common stock in the Southern California Edison Company, Limited.

It Is Further Ordered, Adjudged and Decreed by the Court that certificates dated February 19, 1929, and bearing numbers AO61852 and A9230 to A9234 inclusive, for five hundred seventy-five (575) shares of common stock of the Southern California Edison Company, Limited, be and the same are hereby cancelled and for naught held; that said

plaintiff, George E. Burton, be and he is hereby ordered and directed to surrender and deliver the last-above designated certificates to the Southern California Edison Company, Limited, within 20 days from the date of the filing [78] of this decree, with instructions from George E. Burton to the Southern California Edison Company, Limited, to issue in the place and stead thereof new certificates for two hundred eighty-seven and one-half (287½) shares of common stock in the Southern California Edison Company, Limited, to Lester W. Hurley.

It Is Further Ordered, Adjudged and Decreed by the Court that title to the remaining and unappropriated two hundred eighty-seven and one-half (287½) shares of common stock in the Southern California Edison Company, Limited, including therein the pledged stock, if any, shall vest in George E. Burton.

It Is Further Ordered, Adjudged and Decreed by the Court that the defendant, Lester W. Hurley, have and recover his costs and charges herein expended and have execution for the enforcement of the terms and provisions of this judgment.

Dated this 24 day of July, 1945.

Enter

EDGAR S. VAUGHT,  
Judge Assigned.

Foregoing Journal entry approved as to form. Parties hereto stipulate that this journal entry of judgment may be signed by the Court during his

absence from the jurisdiction of the Judicial District in which this cause was tried.

STANLEY, STANLEY,  
SCHROEDER, WEEKS  
& THOMAS,

By LEE E. WEEKS,  
Attorneys for Plaintiff,

THURMAN L. McCORMICK,  
RICE, MILLER & HYATT,

By THOMAS C. LYSAUGHT,  
Attorneys for Defendant.

Filed July 26, 1945.

HARRY M. WASHINGTON,  
Clerk.

(Affidavit of Service by Mail attached.)

Approved as to form: April 22, 1949.

/s/ [Illegible]

Attorney for Plaintiff.

[Endorsed]: Filed April 26, 1949. [79]

In the District Court of the United States, South-  
ern District of California, Central Division  
No. 5187-WM Civil

LESTER W. HURLEY,

Plaintiff,

vs.

SOUTHERN CALIFORNIA EDISON COM-  
PANY, LIMITED, a corporation,

Defendant.

### JUDGMENT

The court having made and filed findings of fact and conclusions of law herein, and having ordered entry of judgment in accordance therewith,

It Is Now Ordered, Adjudged and Decreed that plaintiff, Lester W. Hurley, take nothing by his complaint herein and that defendant, Southern California Edison Company, Limited, a corporation, have judgment for its costs in this action incurred as taxed by the clerk in the sum of \$21.50.

April 26, 1949.

/s/ WM. C. MATHES,

U. S. District Judge.

Judgment entered Apr. 28, 1949.

Docketed Apr. 28, 1949.

Book 57, Page 740.

EDMUND L. SMITH,

Clerk,

By /s/ THEODORE HOCKE,

Deputy.

[Endorsed]: Filed April 26, 1949. [81]

[Title of District Court and Cause.]

NOTICE OF APPEAL BY  
LESTER W. HURLEY

Notice is hereby given that Lester W. Hurley, the above named plaintiff hereby appeals to the Court of Appeals for the 9th Circuit from the final judgment entered in this action on April 28, 1949, in Judgment Book number 57, page 740.

Notice is further given that this appeal is taken from and specifically limited to that part of the judgment above designated which is based upon the following conclusions of law wherein the Court declared the law to be:

XI.

“That pursuant to the provisions of Section 1475 of the Civil Code of the State of California, defendant discharged its obligations to the plaintiff herein as an owner in joint tenancy of stock in the defendant corporation by its payment of dividends to, and delivery of stock rights to, or upon the order of, Elizabeth J. Price, joint tenant and joint obligee; that neither [82] said dividends nor stock rights constituted “deposits” in the hands of the defendant and are, therefore, not controlled by the provisions of the California Civil Code relating to deposits.”

XII.

“. . . Plaintiff would not be entitled to interest prior to the date of his demand on defendant for payment of the dividends, which demand was made

on October 15, 1945. (*Perkins v. Benguet Mining Co.*, supra, 55 Cal. App. (2d) at 765.

Let judgment be entered for the defendant accordingly.”

Signed and dated this 25th day of May, 1949.

/s/ FRANK M. GUNTER,

/s/ THURMAN L. McCORMICK,

Attorneys for Appellant

Lester W. Hurley.

[Endorsed]: Filed May 25, 1949. [83]

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[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED ON BY  
APPELLANT, LESTER W. HURLEY

I.

Payment to one of several joint tenants has not been so pleaded by defendant as to properly raise the issue and place it before the Court in such manner that defendant is entitled to rely thereon as a defense.

II.

Defendant's present claim of payment to one of several joint tenants convicts defendant of actual knowledge of the fraud practiced on the plaintiff as a co-tenant.

III.

When a dividend is declared it is immediately severed from the stock, and title thereto vests in

each stockholder individually and not as a joint tenant, regardless of how the stock may have been held. [84]

#### IV.

Defendant knew or had reason to know of the forgery and fraud perpetrated upon the plaintiff by Elizabeth J. Price and George E. Burton through notice both actual and constructive.

#### V.

The defendant had actual knowledge as a matter of law that Hurley was being excluded from the dividends on the 575 common shares, and this exclusion is the "fraud" that is referred to in the exception read into section 1475 by the decisions.

#### VI.

The exception expressly stated in section 1475 as to deposits precludes reliance on the section in the case at bar. As to dividends on the 188 and 191 shares of stock the defendant not only had reason to know that Hurley was being excluded from said dividends, but actually secreted and failed to disclose information concerning said dividends, thereby making said exclusion possible.

#### VII.

The stock dividends clearly do not fall within section 1475 and the issuance and delivery of said warrants to Elizabeth J. Price in violation of defendant's own resolutions and the warrants representing the same, takes said stock dividends out of

section 1475 by reason of fraud practiced by defendant.

/s/ THURMAN L. McCORMICK,  
Attorney for Appellant.

Received copy of the above Statement of Points relied on by Lester W. Hurley, together with copy of Designation of the Record to be prepared by the clerk of the court in behalf of Lester W. Hurley, this 25th day of May, 1949.

FULCHER & WYNN,  
By /s/ CAROL G. WYNN,  
Attorney for Appellee.

[Endorsed]. Filed May 25, 1949. [85]

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[Title of District Court and Cause.]

DESIGNATION OF THE RECORD TO BE  
PREPARED BY THE CLERK ON BE-  
HALF OF LESTER W. HURLEY, APPEL-  
LANT

Now comes the plaintiff, Lester W. Hurley, and directs the clerk of the United States District Court, Southern District of California, Central Division, to prepare and transmit to the appellate court a true copy of the following parts of the record appearing in the above entitled cause in said court, to-wit:

1. Plaintiff's petition.
2. Defendant's answer and supplemental answer.



3. Findings of fact made in said cause by the United States District Court.

4. Conclusions of law made and entered in said cause by the United States District Court.

5. Judgment entered in said cause on April 28, 1949.

6. Pre-trial stipulation entered in the above entitled cause by and between the respective attorneys of record, dated June 11, 1946. [86]

7. Notice of Appeal.

8. Statement *on* points on which Lester W. Hurley intends to rely on appeal.

Signed and dated this 24 day of May, 1949.

/s/ THURMAN L. McCORMICK,  
Attorney for Appellant.

[Endorsed]: Filed May 25, 1949. [87]

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[Title of District Court and Cause.]

#### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 87, inclusive, contain the original Complaint for Accounting; Answer of Defendant; Pre-Trial Stipulation; Supplemental Answer of Defendant; Findings of Fact and Conclusions of Law after New Trial; Judgment; Notice of Appeal; Statement of Points Relied on by Appel-

lant; and Designation of the Record to be Prepared by the Clerk on Behalf of Lester W. Hurley, Appellant which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 23 day of June, A.D. 1949.

EDMUND L. SMITH,  
Clerk.

[Seal] By /s/ THEODORE HOCKE,  
Chief Deputy.

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[Endorsed]: No. 12278. United States Court of Appeals for the Ninth Circuit. Lester W. Hurley, Appellant, vs. Southern California Edison Company, Limited, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed June 24, 1949.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals for the  
Ninth Circuit

No. 12278

LESTER W. HURLEY,

Appellant,

vs.

SOUTHERN CALIFORNIA EDISON COM-  
PANY, LIMITED, a Corporation,

Appellee.

DESIGNATION OF THE RECORD ON BE-  
HALF OF LESTER W. HURLEY, APPEL-  
LANT

Now comes the Appellant, Lester W. Hurley, and designates as necessary and material to the consideration of this appeal and a review by this Court the following parts of the Record, to-wit:

1. Plaintiff's Petition.
2. Defendant's answer and supplemental answer.
3. Findings of fact made in said cause by the United States District Court, including all exhibits incorporated therein by reference.
4. Conclusions of law made and entered in said cause by the United States District Court.
5. Judgment entered in said cause on April 28, 1949.
6. Pre-trial stipulation entered in the above-entitled cause by and between the respective attorneys of record, dated June 11, 1946.
7. Notice of Appeal.

8. Statement of points on which Lester W. Hurley intends to rely on appeal.

Signed and dated this 9th day of September, 1949.

/s/ HAROLD EASTON,  
/s/ THURMAN L. McCORMICK,  
Attorneys for Appellant.

[Endorsed]: Filed Sept. 15, 1949.

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[Title of Court of Appeals and Cause.]

STATEMENT OF ADDITIONAL POINT RELIED ON BY APPELLANT LESTER W. HURLEY

IX.

Defendant was chargeable with knowledge that plaintiff was a minor and plaintiff had a right to and did disaffirm the transactions promptly upon learning of them.

THURMAN L. McCORMICK  
and

HAROLD EASTON.

By /s/ HAROLD EASTON,  
Attorneys for Appellant,  
Lester W. Hurley.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Sept. 15, 1949.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED ON BY  
APPELLANT, LESTER W. HURLEY

I.

Payment to one of several joint tenants has not been so pleaded by defendant as to properly raise the issue and place it before the Court in such manner that defendant is entitled to rely thereon as a defense.

II.

Defendant's present claim of payment to one of several joint tenants convicts defendant of actual knowledge of the fraud practiced on the plaintiff as a co-tenant.

III.

When a dividend is declared it is immediately severed from the stock, and title thereto vests in each stockholder individually and not as a joint tenant, regardless of how the stock may have been held.

IV.

Defendant knew or had reason to know of the forgery and fraud perpetrated upon the plaintiff by Elizabeth J. Price and George E. Burton through notice both actual and constructive.

V.

The defendant had actual knowledge as a matter of law that Hurley was being excluded from the dividends on the 575 common shares, and this exclu-

sion is the "fraud" that is referred to in the exception read into section 1475 by the decisions.

#### VI.

The exception expressly stated in section 1475 as to deposits precludes reliance on the section in the case at bar. As to dividends on the 188 and 191 shares of stock the defendant not only had reason to know that Hurley was being excluded from said dividends, but actually secreted and failed to disclose information concerning said dividends, thereby making said exclusion possible.

#### VII.

The stock dividends clearly do not fall within section 1475 and the issuance and delivery of said warrants to Elizabeth J. Price in violation of defendant's own resolutions and the warrants representing the same, takes said stock dividends out of section 1475 by reason of fraud practiced by defendant.

#### VIII.

That the trial court erred in that part of its conclusion of law designated as Conclusion of Law XII, in that it failed and refused to allow interest on dividends wrongfully paid to Elizabeth J. Price prior to the date of demand for said payment. Since a prior demand would have been a vain and useless act, such demand under the law was waived, and appellant is entitled to interest on each dividend

from the date said dividend was declared and set aside for payment.

/s/ HAROLD EASTON,  
/s/ THURMAN L. McCORMICK,  
Attorneys for Appellant,  
Lester W. Hurley.

Received copy of the above and foregoing Statement of Points Relied on by Appellant Lester W. Hurley, together with a copy of Appellant's Designation of the record necessary to the consideration of said appeal in the United States Court of Appeals for the Ninth Circuit, this 12th day of September, 1949.

By /s/ CAROL G. WYNN,  
Attorney for Appellees.

[Endorsed]: Filed Sept. 15, 1949.

